

## ALPHABETIZED BIBLIOGRAPHY ENTRIES

**Aaron, Benjamin.** "Creating and Challenging Compulsory Arbitration Agreements." The Labor Lawyer; Winter/Spring 1998; 13(3): pp. 511-550.

Author examines how labor law and employment relations have changed dramatically since the Great Depression. Author evaluates these changes and their effect on the current state of labor law and employment relations. Article discusses labor law problems since the Depression and provides suggestions on how to develop better employment relations.

{93} SUBJ MATTER: LABOR-GENERAL

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Aarons, Anthony.** "Packaging ADR." California Lawyer; February 1998; 18(2): pp. 27(3).

Article prophesizes a bleak financial outlook for ADR firms. Article indicates ADR competitors are struggling for public acceptance, client acceptance, and for profitable financial returns from their independent contractors. Author notes that industry take off might be with mediation.

{151} ROLE OF LAWYERS

{21} MED: RELATED PROCESSES-GENERAL

**Abramson, Harold I.** "Time to Try Mediation of International Commercial Disputes." ILSA Journal of International & Comparative Law; Spring 1998; 4(2): pp. 323-327.

Article is a transcript of a speech encouraging more use of international mediation mechanisms. Dispute resolution clauses drafted up front are particularly helpful in the international setting because there are so many uncertainties about international litigation. Author compares going to arbitration in the international setting to going to court in the domestic setting. Author contends that parties should discuss what they mean by mediation, establish an obligation to try it first, define meaningful participation, consider whether the mediator can switch over to be an arbitrator, select a set of mediation rules and adapt it to their needs, and establish a compulsory backup dispute resolution process.

{21} MED: RELATED PROCESSES-GENERAL

{92} SUBJ MATTER: INT'L

**Aggarwald, Vinod K., ed.** (1998). Institutional Designs for a Complex World: Bargaining, Linkages and Nesting. Ithaca, New York, Cornell University Press.

Book contains several chapters by different authors each of who examines the process by which states enter into and carry out international agreements. Specifically, the book focuses on the bargaining process behind the development of international institutions such as the European Monetary Union. Authors also examine the ways in which different international institutions interact with each other in resolving conflicts between the institutions' member-states.

{92} SUBJ MATTER: INT'L

**Alexander, Peter C., et al.** "Integrating Alternative Dispute Resolution into the Bankruptcy Curriculum." Dickinson Law Review; Winter 1998; 102: pp. 259-275.

Article presents the classroom technique given to debtor-creditor and ADR students to introduce bankruptcy dispute resolution. Author provides an exercise that allows students to play the roles that a lawyer plays in ADR processes in bankruptcy cases. Article includes the facts provided to each student and an evaluation of the student's performance. Author suggests that such a program could be included in the third-year curriculum for law students.

{155} TEACHING

**Alfini, James J. and Eric R. Galton, eds.** (1998). ADR Personalities and Practice Tips. Washington D.C., American Bar Association Section of Dispute Resolution.

Book includes a collection of testimonial articles from twenty-three individuals regarding their experiences with ADR. Book appendices include form letters, mediation agreements, fee schedule explanations, checklists, and other items. Book also includes bibliographical references.

{74} SUBJ MATTER: GENERAL

**Almaguer, Alejandro E. and Roland W. Baggott III.** "Note, Shaping New Legal Frontiers: Dispute Resolution for the Internet." Ohio State Journal on Dispute Resolution; 1998; 13(2): pp. 711-748.

Note examines unique factors of online environment that render traditional litigation over disputes impractical. The authors analyze the failure of the Virtual Magistrate Project and determine that lessons can be learned from that experimental approach to develop ADR schemes that will be effective in cyber-based disputes.

{74} SUBJ MATTER: GENERAL

**Anderson, Ed.** "The Latest Word for Employers and Employees on Drafting Arbitration Clauses." The Hennepin Lawyer; June 1998; 67(6): pp. 18(2).

Author briefly touches on important Supreme Court employment arbitration cases. The author gives tips on how to draft an effective arbitration clause. Author discusses; 1) fairness in the system; 2) neutrality of the arbitrator; 3) decisions under the law; and 4) cost shifting. Author concludes by emphasizing the importance of using arbitration to resolve employment claims.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Arnold, Tom.** "Why is ADR the Answer?" The Computer Lawyer; July 1998; 15(7): pp. 13-20.

Author writes an impassioned description of the inadequacies of the U.S. court system. Article points out that many countries, unlike the U.S., focus their legal system on training mediators, not lawyers, and see court litigation as an unattractive alternative to dispute resolution. Author discusses several different types of ADR, and the reasons why ADR is a much better solution for all parties involved than litigation. Article concludes that although ADR processes are not foolproof, it can be made inherently safe through good contract work and thorough pre-mediation work.

{74} SUBJ MATTER: GENERAL

**Arnold, Tom.** "Arbitration Clause Checklist of Considerations." Corporate Counsel's Quarterly; October 1998; 14(4): pp. 14-33.

Article provides checklist for attorneys when constructing arbitration clauses. Author points out that arbitration rules do not cover all arbitration concerns. Author points out important issues to consider when drafting an arbitration clause.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Baker, Debra.** "Dream Weavers: Four Lawyers Who Feared Frustration of Burnout Would Drive Them from their Careers Show Off How They Found New Excitement in the Law." American Bar Journal; June 1998; 84: pp. 54-59.

Article focuses on four attorneys who changed the direction of their career paths after experiencing burnout. Article spotlights a trial attorney who switched to a career in mediation. This career change renewed his interest

in the law and exposed him to a wider range of legal issues.

{21} MED: RELATED PROCESSES-GENERAL

**Baker, Emily.** "Breaking Loose: Fix the System? Or Toss it Entirely? Either Way, a Handful of Plaintiff's Lawyers Have Wall Street's Mandatory Arbitration System in a Bind. Here's how they did it." American Lawyer; May 1998; 20(4): pp. 66-70.

Article briefly examines two recent civil cases that challenged mandatory arbitration of gender discrimination claims in the securities industry. Author contends that these cases have called into question the strong presumption in favor of arbitration that has existed since the Supreme Court's ruling in *Gilmer*.

{106} SUBJ MATTER: SECURITIES

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Barnes, Ginny Pearson** (1998). Successful Negotiating: Letting the Other Person Have Your Way. New Jersey, Career Press.

Book discusses the "art" of the negotiation process and offers advice on how to make it as successful and productive a process as possible. Book focuses on a variety of concepts such as emotional barriers to negotiating, building healthy relationships, negotiating through empowerment, communicating effectively, negotiating tactics, overcoming the fear of confrontation, and ways to create total satisfaction. Author contends that the key to successful negotiation occurs when a person communicates what he/she wants in ways that both persuades and satisfies others.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Barr, Richard.** "Meetings of Minds & Bodies." Solicitor's Journal; 1998; January 30: pp. 96.

Article comically portrays the spectrum of negotiation styles. The author provides a humorous perspective on adopting the Finnish practice of negotiating in a sauna. Suggestions for other amusing strategies for winning negotiations are given.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Barringer, William H.** "Competition Policy and Cross Border Dispute Resolution: Lessons Learned from the U.S.-Japan Film Dispute." George Mason Law Review; Spring 1998; 6(3): pp. 459-477.

Article explores the implications of a recent controversy that occurred between the film companies of Kodak and Fuji which sparked a cross-

border dispute between the United States and Japan over alleged restrictive business practices affecting trade. Article discusses competition policy issues and evaluates how to effectively deal with other cross-border disputes that occur in the future. Author believes that the adoption of a process-based solution may prove to be successful in dealing with such disputes. However, he contends that it will be difficult to reach an agreement on binding rules of competition policy any time soon.

{92} SUBJ MATTER: INT'L

**Bauer, Edward A.** "Engalla's Legacy to Arbitration: The Importance of Independent Administration." Colorado Lawyer; March 1998; 27(3): pp. 37-40.

Article discusses the California Supreme Court case of *Engalla v. Permanente Medical Group, Inc.* 938 P.2d 903 (Cal. 1997) in which the court found that the plaintiff did not have to arbitrate his medical malpractice claim due to promissory fraud on the part of the defendant. Author contends that the self-administration of the arbitration process makes a finding of fraud more likely, and suggests that independently administered models should be used. Finally, the author advocates a dual level of judicial scrutiny for self-administered and independently administered arbitration models.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Bayard, Forrest S.** "Parenting by Example: Teaching Your Children Negotiation, Forgiveness, Teamwork, and Generosity." Family Advocate; Summer 1998; 21(1): pp. 49-51.

Magazine article asserts that joint custody requires joint decision-making on a continuing basis. Author states that parents should try to look at different points of view, including the child's, but not involve the child in a disagreement. Parents should clearly define issues and share reasoning and brainstorming solutions with each other. Author suggests a mediator as an alternative to litigation and advocates it as a way to show children how conflicts should be resolved. Litigation causes parties to lose sight of the child's best interest.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

**Bayer, Jonathon A.** "Practicing Law at the Margins: Surveying Ethics Rules for Legal Assistants and Lawyers who Mediate." Georgetown Journal of Legal Ethics; Winter 1998; 11(2): pp. 411-420.

Article analyzes how law firms have chosen to expand the responsibilities

and duties of their non-legal professionals instead of hiring more attorneys to deal with the complex legal services that clients demand. Author clarifies the ethics rules surrounding non-lawyers who perform substantive legal work and lawyers who perform law-related services.

{138} ETHICS: GENERAL

{21} MED: RELATED PROCESSES-GENERAL

**Beauregard, Stephanie A.** "Court-Connected Juvenile Victim-Offender Mediation: An Appealing Alternative for Ohio's Juvenile Delinquents." Ohio State Journal on Dispute Resolution; 1998; 13(3): pp. 1005-1038.

Note examines the juvenile victim-offender mediation programs in Ohio. Author describes the substantive aspects of juvenile victim-offender mediation and compares the various programs that have developed in Ohio. Author concludes that the mediation program in Ohio is a step in the right direction in altering juvenile behavior problems.

{82} SUBJ MATTER: CRIMINAL

{21} MED: RELATED PROCESSES-GENERAL

**Bebchuk, Lucian A.** (1998). The Effect of Offer-of-Settlement Rules on the Terms of Settlement. Cambridge, Massachusetts, National Bureau of Economic Research.

Paper develops a framework under the offer-of-settlement rules that are employed to analyze the rules' effect on settlement terms. Such analysis underlines a general principle that is used to identify the settlement amount under the rule. Furthermore, the analysis is then employed to drive the settlement terms under the rules. The paper then proceeds to identify a variety of dissimilar rules that produce identical settlements. Authors conclude that their results have both positive and normative implications.

{122} SETTLEMENT: ENFORCEMENT OF SETTLEMENT OR AWARD

**Beckwith, Kathy** (1998). Don't Shoot! We May Both Be On the Same Side. Minneapolis, Educational Media Corp.

Illustrated book provides a curriculum for grades 3 through 6 in techniques to resolve conflicts and solve problems. The manual first defines conflicts and then provides skills to deal with conflicts in the classroom. The author emphasizes the use of negotiation, class meetings, and mediation. The manual includes handouts for the students, role plays for the classroom, and audiocassettes.

{83} SUBJ MATTER: EDUCATION

## {155} TEACHING

**Benton, Gary L. and Paul S. Schmidtberger.** "Intellectual Property Disputes Under the Amended AAA International Rules." International Business Lawyer; September 1998; 26(8): pp. 359-363.

Article argues that international arbitration offers several significant advantages over judicial resolution with respect to intellectual property disputes. Authors proceed to describe the American Arbitration Association's international rules, the 1997 amendments to the rules, arbitration of international intellectual property disputes, and the framework for relief under such a construct. Article concludes by stating that the 1997 amendments to the AAA international rules increase the attractiveness of the AAA as an international arbitral institution for the administration of intellectual property arbitrations.

{92} SUBJ MATTER: INT'L

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Berger, Klaus P.** "International Arbitral Practice and the UNIDROIT Principles of International Commercial Contracts." American Journal of Comparative Law; Winter 1998; 46(1): pp. 129-150.

Article examines whether the UNIDROIT Principles, which attempt to streamline rules throughout the world, can be applied in the area of international commercial arbitration. Author reviews recent arbitral case law regarding the success of applying the Principles to the international law of contracts. Author contends that the similar use of UNIDROIT Principles in international commercial arbitration will provide a practical tool for interpreting domestic laws in international trade law problems.

{92} SUBJ MATTER: INT'L

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Berlin, Robert.** "Opinion Mediation: Sharing vs. Instructing." Dispute Resolution Journal; May 1998; 53(2): pp. 48-49.

Article briefly discusses mediators sharing their knowledge with disputants in order to 'level the table' and broaden the context of negotiations. Author believes broadening mediators' substantive knowledge and giving mediators a broader role in sharing information will be helpful in promoting communication and long-lasting agreements between disputants.

{21} MED: RELATED PROCESSES-GENERAL

**Bernstein, Marvin M.** "Child Protection Mediation: Its Time Has

Arrived." Canadian Family Law Quarterly; 1998; 16: pp. 73.

Article provides a discussion of the viability of applying traditional mediation to child protection cases. Author contends that mediation is under-used in child protection cases. Author exposes the myths of child protection mediation usage. Article reviews empirical evidence of successful child protection mediation to refute the seven myths.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

**Birch, Steven K.** "The Arbitrator's Dilemma: External vs. Internal Law? Narrowing the Debate." Dispute Resolution Journal; May 1998; 53(2): pp. 58-66.

Article analyzes the debate between supporters and opponents of contractualism in the context of arbitration and labor disputes. Contractualism is the theory that an arbitrator draws his jurisdiction and authority only from the collective-bargaining agreement of the parties. Author contends that the contractual view is too problematic because a given industry can set its own laws by creating rules of conduct and providing for arbitration in their contracts. Therefore, statutes, regulations, and court decisions need to be taken into consideration. Author also provides suggestions for how an arbitrator can appropriately deviate from contractualism.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{93} SUBJ MATTER: LABOR-GENERAL

**Biukovic, Ljiljana.** "Impact of the Adoption of the Model Law in Canada: Creating a New Environment for International Arbitration." Canadian Business Law Journal; September 1998; 30(3): pp. 376-414.

Article discusses Canada's adoption of the UNCITRAL and its intention to open the door to international commercial arbitration. Author explains that despite Canada's enthusiasm, there have been non-legal barriers preventing a more rapid increase in arbitration. Author suggests that Canada must address its social barriers to change in order to become more involved with international trade.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{92} SUBJ MATTER: INT'L

**Black-Branch, Jonathan L.** "The Professional Status of Mediators." Family Law; January 1998; 28: pp. 39-41.

Author contends that because mediators are largely unaccountable to any sort of mandatory and centralized body charged with the task of regulating



mediators and the process of mediation, the professional status of mediators remains an open question. Furthermore, this lack of regulation gives rise to concerns regarding the standards of mediation services provided to public at large. To remedy the situation, the author suggests that mediators should be made accountable to a professional society, analogous to those that govern the professional conduct of doctors and lawyers. The author sets forth several criteria to determine what it means to be a profession including; the strength of character of its members, possession of a body of pedagogical knowledge not normally had by the non-professional, and organization into one or more professional associations granted autonomy in control of the work of the profession and discipline of its members. The author argues that mediators should be so organized for the purposes, among other things, of controlling entry into the practice of mediation, providing competent mediation services to the public, developing mediator accountability to a canon of ethics and professional standards, and cultivating a public perception of mediators as professionals.

{21} MED: RELATED PROCESSES-GENERAL

**Blair, M. Wayne.** "Fee Arbitration: an Update on Revisions to the Proposal and an Argument in Support." Washington State Bar News; May 1998; 52(5): pp. 24(8).

Article discusses and promotes the concept of making fee arbitration mandatory in disputes concerning attorney fees. The article argues that the proposed rule by the Washington State Bar to require mandatory fee arbitration will provide an informal, prompt, and economical way to end disputes between attorneys and their clients.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Block, Richard I.** "Arbitration: Time Limits and Continuing Violations." Michigan Law Review; August 1998; 70(3): pp. 2384-2398.

Article examines the concept of "continuing violation" as a source of confusion among litigating parties and their arbitrators. Author contends that misunderstanding and confusion flow from the terminology of the word "continue." Moreover, the author states that this confusion can lead to an inability to distinguish which acts are grievable and which are not. As a result, this causes arbitrators uncertainty in the proper application of the continuing violation doctrine. Author argues that the search for continuing violations must focus on the existence of new and independent actions that may be claimed as contract violations without regard to any nexus to past

events.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Boardman, Clare and Richard Beach.** "Mixed-Gender Teamwork in Negotiation." Australian Dispute Resolution Journal; May 1998; 9(2): pp. 110-112.

Article analyzes gender traits and stereotypes and describes their affect on the negotiation process. Authors are a male-female negotiation team who has capitalized on the strengths and weaknesses of their own genders. Authors contend that gender is increasingly less important in business as the sexes continue to move toward equality. Authors stress, however, the importance of recognizing gender strengths and weaknesses in negotiations.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Boeglin, Marcus C.** "The Use of Arbitration Clauses in the Field of Banking and Finance: Current Status and Preliminary Conclusion." Journal of International Arbitration; September 1998; 15(3): pp. 19-30.

Article examines the use of arbitration in modern banking and finance fields. Author notes the traditional reluctance of bankers to utilize arbitration, and how this reluctance is gradually eroding into a slow acceptance of arbitration. Author outlines areas of banking and finance where arbitration is being used with increasing frequency. Author believes that the appropriateness of arbitration in banking and finance is contingent upon the interaction of any given transaction's elements.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Bohlander, George W.** "Police Officer Discipline and Arbitration: The Issue of Conduct Unbecoming." Journal Of Collective Negotiations In The Public Sector; Winter 1998; 27(1): pp. 1-12.

Article provides an explanation of why arbitrators in police discipline cases tend to lower the charges and penalties alleged against the officer. Author describes a number of categories of police discipline arbitration and how they seem to favor the officer. Author argues it is the differences between arbitration standards and police professional standards that create the apparent discrepancy; and if arbitration is to be used it is arbitration's standards that must be adopted.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Boller, Harvey R. And Donald J. Petersen.** "Job Discrimination Claims Under Collective Bargaining." Dispute Resolution Journal; August 1998;

53(3): pp. 38(16).

Article investigates whether the presence of a mandatory arbitration clause in a collective bargaining agreement effectively compels an employee to arbitrate an alleged violation of an employment discrimination statute in lieu of the litigation of her claim. Circuit courts have held that unless the arbitration provision confers upon an arbitrator the power to vindicate all of the employee's substantive and remedial statutory rights, the employee will be permitted to sue. Nevertheless, in *Austin v. Owens-Brockway Glass Containers, Inc.*, the 4th circuit held that an individual employee's right to litigate these statutory claims may be waived by the union. The authors conclude that the issues surrounding the inclusion of a mandatory arbitration clause in a collective-bargaining agreement have not yet been resolved and will continue to be the source of litigation in the future.

{94} SUBJ MATTER: LABOR-DISCRIMINATION

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Borchers, Patrick J.** "A Few Little Issues for the Hague Judgments Negotiations." Brooklyn Journal of International Law; March 1998; 24(1): pp. 157-166.

Article focuses on issues that are likely to present themselves during negotiations between the U.S. and other members of the Hague Conference. These issues include; sufficient incentive to bargain, inconsistencies with U.S. jurisdictional standards, and excessive damages. The author contends that successful negotiation will require overcoming suspicions about the U.S. legal system. The author concludes that a satisfactory judgment convention would enhance the possibility of a more closely integrated worldwide legal system.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

{92} SUBJ MATTER: INT'L

**Bradshaw, William and Mark S. Umbreit.** "Crime Victims Meet Juvenile Offenders: Contributing Factors to Victim Satisfaction with Mediated Dialogue." Juvenile & Family Court Journal; 1998; 49(3): pp. 17-25.

Note reports the results of a study on victim satisfaction in juvenile victim offender mediation programs. Authors believe the results of the study will improve the quality of mediator training for such programs. The results reveal that satisfaction with the mediator is predictive of satisfaction with mediation. They also suggest that the interpersonal process of negotiating fair agreements may be more important to satisfaction with mediation than

the actual restitution, and they highlight the importance of face-to-face encounters and negotiations between the victim, offender, and mediator.

{21} MED: RELATED PROCESSES-GENERAL

**Brand, Norman** (1998). Discipline and Discharge in Arbitration. Washington D.C., Bureau of National Affairs.

Book describes theories used by arbitrators in a variety of discipline cases. Author explains how in some areas of discipline arbitration, the views and theories are substantially uniform, and in other areas there are recognized minority views. In addition, the author explores the unique theories that practitioners need to know to be effective in arguing their cases. Author discusses how to prepare and present a case, choose an arbitrator, and how to effectively advance a position.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{93} SUBJ MATTER: LABOR-GENERAL

**Brand, Stephen**. "Separation and Divorce: Why Clients Should See a Solicitor." Journal of the Law Society of Scotland; February 1998; 43(2): pp. 58, 59.

Article provides a basic overview of the mediation process. Author suggests that when a client faces separation and divorce, that client's interests may be best served by a referral to a solicitor mediator. Author illustrates his technique in persuading a client that mediation may be the appropriate route for them. Author explains when and how to refer cases to a solicitor mediator. Author concedes that mediation may not always be the appropriate solution, but usually results in a better understanding between the parties and encourages progress on at least some of the issues.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

{21} MED: RELATED PROCESSES-GENERAL

**Brooks, Carolyn**. "Don't Fence Us In." Australian Dispute Resolution Journal; May 1998; 9(2): pp. 94-97.

Article explores the differences between men and women in negotiation techniques. Author discusses gender stereotypes and the effect they have had on her personal experiences in negotiation. Author asserts that females are natural negotiators but have to prove themselves more than males in order to overcome these stereotypes.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Brown, Max Douglas**. "Rush Hospital's Medical Malpractice Mediation

Program: An ADR Success Story." Illinois Bar Journal; August 1998; 86(8): pp. 432-440.

Article describes a successful medical malpractice mediation program at a Chicago-area hospital. The process of developing the program and its results are discussed. Author concludes that the program is a success because, inter alia, both plaintiffs and defendants have been satisfied with the results.

{21} MED: RELATED PROCESSES-GENERAL

{89} SUBJ MATTER: HOSPITALS

**Brudney, James J.** "Mediation and Some Lessons from the Uniform State Law Experience." Ohio State Journal on Dispute Resolution; 1998; 13(3): pp. 795-829.

Article provides an overview of the task of developing a successful uniform mediation law. Author suggests that attention to certain aspects of the uniform statutory approach may help in the development of a solid mediation statute.

{21} MED: RELATED PROCESSES-GENERAL

{144} LEGISLATION

**Buehrer, Stephen.** "A Clash of the Titans: Judicial Deference to Arbitration and the Public Policy Exception in the Context of Sexual Harassment." American University Journal of Gender and the Law; Spring 1998; 6: pp. 265-297.

Article examines the use of arbitration when accused sexual harassers are subject to collective bargaining agreements. Author argues that courts ignore public policy considerations against sexual harassment in the workplace and the "realities of the modern workplace" when they defer these arbitration rulings. Author supports the argument by discussing how arbitrators treat such cases.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{94} SUBJ MATTER: LABOR-DISCRIMINATION

**Bulfinch, Susan R. and Renee Sperling.** "When Mediation Meets Litigation: CrossOver Dangers." American Journal of Family Law; Fall 1998; 12(3): pp. 141-147.

Article addresses various concerns associated with using both litigation and mediation in resolving family law disputes, and provides five examples of "cross-over" dangers relating to such matters. Article analyzes aspects such as effectively using mediation in conjunction with litigation, its related

strengths and weaknesses, and situations in which mediation is the favored method. Authors contend that mediation is the best dispute resolution method to use with respect to family law disputes, and consequently, believe that it is essential for attorneys to be able to recognize and understand the differences between litigation and mediation.

{21} MED: RELATED PROCESSES-GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

**Busch, Richard F., II.** "Designing Effective Conflict Management Systems." Colorado Lawyer; September 1998; 27(9): pp. 63-66.

Author uses an interoffice memorandum format to illustrate the advantages of using common sense conflict resolution techniques in the business setting. The author explains the disadvantage of turning over business disputes to the courts, noting that costs can be saved and long-term business goals can be maintained with ADR. The author stresses that such dispute resolutions systems must be part of the overall company culture and must allow the company executive to tailor the process to unique company needs.

{146} ORGANIZATION POLICIES AND RULES

**Buzbee, Anthony G.** "When Arbitrable Claims are Mixed with Nonarbitrable Ones: What's a Court to Do?" South Texas Law Review; June 1998; 39(3): pp. 663-705.

Article grapples with the issue of related claims where claims are not controlled by the arbitration agreement, but rather are related to the arbitrable claim. Author defines related claims, analyzes case law dealing with related claims, explores ways courts have handled related claims, and addresses issues of collateral estoppel and res judicata. Author concludes by offering possible solutions to the related claims problem.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Byers, Boyd A.** "Mandatory Arbitration of Employment Law Claims: the Whats, Whys and Hows." The Journal of the Kansas Bar Association; 1998; April: pp. 18(6).

Article analyzes the use of mandatory arbitration in resolving employment disputes. Author discusses the advantages and disadvantages of mandatory arbitration of employment disputes, the legality of mandatory arbitration, and effective ways to implement mandatory arbitration into the employer-employee relationship. Author concludes that arbitration of employment disputes will continue to increase because its use can be a fair, effective, and efficient alternative to litigation.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL  
 {96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Cabranes, Jose A.** "Arbitration and U.S. Courts: Balancing Their Strengths." New York State Bar Journal; March/April 1998; 70(3): pp. 22-24.

Article discusses the development of American arbitration law and its application to both domestic and international arenas. The author raises concerns of courts in abdicating their role in preserving the accountability of the arbitration process. Author concludes with his belief that the federal judiciary is well-positioned to address issues that will strengthen the growing regime of international arbitration.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Cain, Cynthia.** "NFA Arbitration Rule Changes-Keeping the Process Fast and Efficient." Futures and Derivatives Law Report; March 1998; 18(1): pp. 16-22.

Article discusses rule changes of the National Futures Association's arbitration forum. These changes, made to address problems created by large and complex cases, affect three primary categories: discovery, motions, and hearing issues. Author discusses the background of the rule changes and explains their intended effect. A list of documents that may be required of parties to an arbitration follows main article.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Cameron, James and Karen Campbell (1998).** Dispute Resolution in the World Trade Organization. London, Cameron.

Collection of essays addresses the issues of effective global policymaking under the inevitable effects of globalization. Editors contend that the World Trade Organization's Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) will be an essential part of meeting the challenges of an increasingly integrated world. The WTO's function in the resolution of international disputes has important implications in its role in the policy-making process. Book discusses the use of DSU and practical steps to improve the use of DSU.

{92} SUBJ MATTER: INT'L

**Carbonneau, Thomas.** "Debating the Proper Role of National Law Under the New York Arbitration Convention." Tulane Journal of International and Comparative Law; Spring 1998; 6: pp. 5-56.

Article provides an analysis of the debate in the international community over the implementation of the enforcement regime of the New York Arbitration Convention. Author states that the debate was provoked by the court rulings in *Chromalloy Aeroservices v. Arab Republic of Egypt*, 939 F. Supp. 907 (D.C. Cir. 1996), and *Algahanim & Sons v. Toys "R" US*, 126 F.3d 15 (2d. Cir. 1997). He contends that while the cases come to different conclusions about the functions of U.S. domestic law in the Convention's enforcement framework, both enhance U.S. domestic law of arbitration while de-emphasizing the "transborder and anatonial" stature of the Convention. Author argues that the Convention needs to be amended to reflect contemporary realities of the international commercial arbitration process.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{92} SUBJ MATTER: INT'L

**Carrington, Paul D.** "Regulating Dispute Resolution Provisions in Adhesion Contracts." Harvard Journal on Legislation; Winter 1998; 35(1): pp. 225-232.

Article provides a proposed statute that limits the use of adhesion contracts that contain provisions that decrease the rights of the weaker party while keeping arbitration clauses intact. Article focuses on correcting provisions that would impair a party's choice of law or forum without affecting any of the arbitration provisions in order to protect employees, local franchisees, and consumers from such unconscionable clauses in contracts.

{144} LEGISLATION

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Castan, Melissa.** "Adrift in the South China Sea: International Dispute Resolution and the Spratly Islands Conflict." Asia Pacific Law Review; Summer 1998; 6(1): pp. 93-107.

Article examines the options for dispute resolution in relation to ongoing international conflict in the Asia Pacific region. Because of the historical, legal, and territorial factors that are embodied in the conflict, conventional dispute resolution processes of arbitration, adjudication, or submission to a regional authority are not viable means for resolving international conflicts in the area. Author concludes that the disputants must truly renounce the use of force and must utilize more effective dispute resolution procedures.

{92} SUBJ MATTER: INT'L

**Cattell, Edward V.** "Recreational Vessel Salvage Arbitration: An Interim



Report." Journal of Maritime Law and Commerce; April 1998; 29(2): pp. 257-265.

Until recently, American maritime salvage arbitration has been virtually non-existent, since the popular contract for salvage arbitration referred disputes to England. However, American courts have recently ruled that the Federal Arbitration Act strips this commonly used contract of its power. Consequently, several American maritime arbitrators have attempted to fill this void. The author contends that these efforts have, at least initially, proved successful.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL  
{97} SUBJ MATTER: MARITIME

**Cherry, Miriam A.** "Not-So-Arbitrary Arbitration: Using Title VII Disparate Impact Analysis to Invalidate Employment Contracts That Discriminate." Harvard Women's Law Journal; Spring 1998; 21: pp. 267-307.

Author attacks the use of mandatory arbitration clauses as a condition of employment. She supports the use of a Title VII disparate impact claim to invalidate these clauses. Author also advocates the use of political pressure to eradicate these clauses.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL  
{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Cheung, Sai-On and Yuet-Wa Yeung.** "The Dispute Resolution Adviser System: An Anatomy of Success." Australian Dispute Resolution Journal; February 1998; 9(1): pp. 28-41.

Article provides an overview of the Hong Kong government's Dispute Resolution Adviser system that is used to reduce claims between employers and contractors and to minimize disruptions in construction projects. The authors conducted a survey of persons involved with the program to assess its relative success and determined, among other findings, that the strict time constraints imposed upon the parties to any dispute is one of the program's most significant strengths, and that it helped to resolve problems at the site level.

{80} SUBJ MATTER: CONSTRUCTION

**Clapp, Roger C.** "Family Law Disputes Cry Out for Mediated Settlements." Dispute Resolution Journal; May 1998; 53(2): pp. 34-35.

Article identifies and discusses three goals in the resolution of family disputes: reaching an early compromise, achieving genuine client

acceptance, and preservation of ongoing relationships. Author argues that these goals are achieved most often through mediation as opposed to litigation or tough negotiation. The author notes, however, that mediation is not being utilized effectively to resolve family disputes. Author advocates increased awareness of mediation as a solution to family law disputes and suggests methods for utilizing mediation effectively.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

{21} MED: RELATED PROCESSES-GENERAL

**Cohen, Lawrence G.** "Maritime Arbitration in Asia." Journal of Maritime Law and Commerce; January 1998; 29(1): pp. 117-121.

Article provides an overview of developments occurring in the field of maritime arbitration in Asia. The author notes that while most maritime arbitrations continue to be performed in the West, as will probably be true in the foreseeable future, the world is currently witnessing a significant economic shift from West to East. With that shift there will be a marked increase in the number of maritime arbitrations held in the Asian nations. Cultural differences between East and West, however, mean that formal dispute resolution processes are used less frequently in Asia than in Western states. For example, some Eastern cultures emphasize harmonic relations among business associates, the maintenance of which requires constant adjustment, and view contracts as the bases of long term relationships rather than a means to secure rights and responsibilities. Thus, Asian companies are less likely to look to arbitration as a means of formal dispute resolution, choosing instead mediation and conciliation. And because arbitration is not used with great frequency in Asia, experienced arbitrators in that region are few. To combat this problem, various arbitration organizations have been established in Tokyo, Singapore, Hong Kong, Malaysia, and China, some of which provide training for arbitrators or promulgate arbitration rules. Even still, the author points out that most arbitrators in Asia retire having heard less than a handful of arbitrations, and even fewer maritime arbitrations. The mechanics of the hearings themselves vary from country to country, as does the language that each Asian nation requires be spoken at arbitration hearings. Nonetheless, the author predicts that the expansion in the Asian economy will be paralleled by a growth in maritime arbitration in Asia.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{97} SUBJ MATTER: MARITIME

**Colvin, Alexander.** "Rethinking Bargaining Unit Determination: Labor

Law and the Structure of Collective Representation in a Changing Workplace." Hofstra Labor & Employment Law Journal; Spring 1998; 15(2): pp. 419-490.

Author discusses a leading issue for current labor lawyers: whether the existing system of law based on the Wagner Act model can continue to be relevant and appropriate for the contemporary workplace. Article examines the process of bargaining unit determination. The structure of the current process of bargaining unit determination is explained and the author considers to what degree it should be modified to respond to the changing industrial relations environment.

{93} SUBJ MATTER: LABOR-GENERAL

**Condliffe, Peter.** "The Challenge of Conferencing: Moving the Goal Posts for Offenders, Victims and Litigants." Australian Dispute Resolution Journal; May 1998; 9(2): pp. 139-149.

Author discusses the advancement of conferencing as a technique to resolve problems between victims and offenders in the Australian criminal system, with focus on the juvenile system. Article examines the growth of conferencing throughout Australia as a restorative model of justice, placing emphasis not on punishment and guilt, but on responsibility and reparation. Author looks at important conferencing issues such as co-existence with the traditional criminal justice system, community alienation, net widening, and the over-emphasis on individuality and their place in the success of conferencing.

{133} COURT REFORM

**Conrad, Daniel R.** "Confidentiality Protection in Mediation: Methods and Potential Problems in North Dakota." North Dakota Law Review; Winter 1998; 74(1): pp. 45-59.

Article provides an analysis of four different methods used to promote confidentiality in the mediation process: 1) confidentiality contracts, 2) federal and state evidentiary rules of evidence, 3) common law privilege, and 4) statutory protection. Author contends that in order to have a successful mediation, there must be a free flow of information between the parties involved. To have such a flow, the author states that there needs to be guarantees of confidentiality. He finds that statutory protection is the best of the four methods. The second part of this article discusses confidentiality protection in North Dakota. The author contends that North Dakota's protective legislation has problems that should be addressed by the legislature before the courts get to it.

## {21} MED: RELATED PROCESSES-GENERAL

**Cooley, John. W.** "Joke Structure: A Source of Creative Techniques for Use in Mediation." University of San Francisco Law Review; Fall 1998; 33(1): pp. 85-97.

Article introduces the reader to some new creativity-enhancing techniques for mediators. The techniques are based upon the author's "joke model of creativity in mediation." The author explains the six standard joke formulas: play on words, reversal, exaggeration, visualization, pairs and triples, and routing. The article includes examples of how the joke formulas can be used as punchline enhancers to generate win-win, optimal, and super-optimal solutions in mediated settlements.

## {21} MED: RELATED PROCESSES-GENERAL

**Corrado, Roberto L.** "The Arbitral Imperative in Labor and Employment Law." Catholic University Law Review; Spring 1998; 47(3): pp. 919-940.

Article provides an analysis of the increasing popularity of labor law reform as part of the Taft-Hartley Symposium: The First Fifty Years. Author examines arbitration in the American workplace and analyzes the underlying rationales that explain the arbitral imperative in labor and employment law. Article discusses the history of labor arbitration, the Taft-Hartley arbitration provisions, and Supreme Court decisions that served to establish labor arbitration as a critical part of American labor law. Author makes predictions about the future of employment arbitration.

## {93} SUBJ MATTER: LABOR-GENERAL

## {44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Covington, Robert N.** "Employment Arbitration after *Gilmer*: Have Labor Courts Come to the United States." Hofstra Labor & Employment Law Journal; Spring 1998; 15(2): pp. 345-418.

Article examines the recent movement toward use of alternative dispute resolution in the workplace for non-unionized employees, including the use of agreements to arbitrate in formal employment contracts. The author's major emphasis is on the 1991 Supreme Court's decision in *Gilmer*. Article provides an overview of the competing values the courts must balance when making decision regarding agreements to arbitrate. Author also analyzes the emerging development of a series of labor and employment law courts in the United States and how they differ from ordinary courts.

## {93} SUBJ MATTER: LABOR-GENERAL

## {96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

## {44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Craik, A. Neil.** "Recalcitrant Reality and Chosen Ideals: The Public Function of Dispute Settlement in International Environmental Law." Georgetown International Environmental Law Review; Winter 1998; 10(2): pp. 551-580.

Article examines the distinction between legal and non-legal means of dispute settlement in the field of international environmental law. Author concludes that a rejection of legal methods may not be the correct decision. Article also discusses how certain characteristics of international environmental law disputes help determine the most effective type of dispute resolution mechanism. Author contends that international environmental dispute settlements should be viewed from the perspective of fulfilling a public function as well as settling the dispute between the two parties.

{84} SUBJ MATTER: ENVIRONMENT

{92} SUBJ MATTER: INT'L

**Crowter, Harold** (1998). Introduction to Arbitration. London, LLP Reference Publishing.

Author provides a detailed step-by-step arbitration manual that is geared towards those with little or no knowledge of arbitration and also as a reference guide for experienced arbitrators. The detailed Table of Contents, reflecting that each chapter is divided into short discrete subjects, facilitates the book's use almost as an index. Author posits that arbitration is a popular international dispute resolution process because foreign companies dislike the perceived disadvantage of litigating as the outsider in national courts. The book focuses on the application of the Arbitration Act of 1996, which unified arbitration law in England, Wales, and Northern Ireland. Author notes that Scottish arbitration law has substantial differences.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Crumb, Deborah J. and Kenneth Jennings.** "Resolving Cases of Patient Abuse in Health-Care Facilities." Dispute Resolution Journal; February 1998; 53(1): pp. 36-43.

Article reflects on the effectiveness of arbitration in discipline cases concerning patient abuse in health-care facilities, and also provides recommendations for preventing such abuse. Author contends that an employer has an obligation to educate employees in desired job behaviors. Author discusses the level of proof involved in disciplinary arbitrations and

related investigatory considerations. Author then emphasizes the importance of applying the appropriate employee discipline to the given situation.

{89} SUBJ MATTER: HOSPITALS

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Cullinan, Tom.** "Contracting for an Expanded Scope of Judicial Review in Arbitration Agreements." Vanderbilt Law Review; March 1998; 51(2): pp. 395-428.

Article discusses "the propriety of contracting for an expanded level of judicial review in arbitration agreements." Case analysis and legislative history of the Federal Arbitration Act lead the author to conclude that parties should be able to expand "the available scope of judicial review" even at the risk of decreased efficiency of the arbitration process.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Currie, Chris M.** "Opinion Wanted: A Theoretical Construct for Mediation Practice." Dispute Resolution Journal; August 1998; 53(2): pp. 70-75.

Article discusses how mediation is currently "in crisis." Mediators are divided as to the fundamental goals of mediation and mediation itself is not functioning properly. Mediators are divided into two competing theoretical camps. Mediation needs a single, solid, fundamental theory. Author suggests the evaluative techniques are competitive and therefore not acceptable in mediation.

{21} MED: RELATED PROCESSES-GENERAL

**Curry, Jeffrey E.** (1998). A Short Course in International Negotiating: Planning and Conducting International Commercial Negotiations. San Rafael, California, World Trade Press.

Book discusses many aspects of international commercial negotiations including how to choose a negotiator, how to pick a location, and how to get the upper hand. Author reveals the problems involved in implementing a negotiation when the deal needs to be followed through. The book includes a list of guidelines for different countries and discusses the commercial environment, strategies and notes for each country.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

{92} SUBJ MATTER: INT'L

**Cusick, Richard P. , et al.** "A Critical Analysis of the Proposed National

Patent Board." Ohio State Journal on Dispute Resolution; 1998; 13(2): pp. 461-504.

Authors examine the structure of an industry sponsored proposal for resolving patent disputes. The article provides a history of patent law and litigation, criticisms of the current system that the proposal is meant to address, and a critique of the effectiveness of the proposal in resolving these criticisms. The authors compare the current proposal to the structure of the National Advertising Division of the Council of Better Business Bureaus, as well as the National Advertising Review Board. The authors conclude by recommending several changes to the proposal in order to increase its effectiveness.

{74} SUBJ MATTER: GENERAL

**D'Zurilla, William T.** "Reflections of a Dalkon Shield Arbitrator." Dispute Resolution Journal; February 1998; 53(1): pp. 13-15.

Article describes the particular ADR program that was devised to address the claims of over 300,000 women who were allegedly injured by the Dalkon Shield intrauterine device. Author mentions that claimants faced a difficult burden of proving causation, but concludes that ADR was generally beneficial to claimants. Author believes this ADR program may serve as a model in future mass-tort cases.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Dakas, Clement James.** "The Legal Framework for the Recognition and Enforcement of International Commercial Arbitral Awards in Nigeria." Journal of International Arbitration; June 1998; 15(2): pp. 95-116.

Article provides an introduction to international commercial arbitration. The article focuses on the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and its impact on Nigeria. Author contends the transformation of Nigerian law through the New York Convention is a positive move.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{92} SUBJ MATTER: INT'L

**Daughtrey , William H., Jr. and Donnie L. Kidd, Jr.** "Modifications Necessary for Commercial Arbitration Law to Protect Statutory Rights Against Discrimination in Employment: A Discussion and Proposals for Change." Ohio State Journal on Dispute Resolution; Fall 1998; 14(1): pp. 29-88.

Article discusses the increased use of arbitration agreements by employers

in light of the Supreme Court's decision in *Gilmer*. The authors examine the development of the Federal Arbitration Act and its effect on relevant federal employment anti-discrimination laws. Authors argue that employer-employee arbitration is unique in the arbitration world and requires additional safeguards to protect the weak bargaining position of the employee.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Davidson, Joel E.** "Successful Mediation: The Do's and Don'ts." Dispute Resolution Journal; August 1998; 53(3): pp. 26-29.

Article provides tips for a successful mediation, such as: 1) do not make a non-negotiable demand in joint session; 2) do not insult opposing advocate; 3) do not insult opposing parties; and 4) prepare. The author contends that if his tips are followed, there will most likely be a successful mediation.

{21} MED: RELATED PROCESSES-GENERAL

**Davis, Kenneth R.** "The Arbitration Claws: Unconscionability in the Securities Industry." Boston University Law Review; 1998; 78: pp. 255-327.

Article traces the evolution of arbitration policy and contends that Supreme Court decisions have distorted the use of voluntary arbitration agreements into unconscionable pressure to force parties to succumb to arbitration. The author criticizes courts for failing to apply controlling common law principles in cases that challenge mandatory arbitration agreements in the securities industry. The author also takes the position that court deference has crippled attempts to tame mandatory arbitration in the securities industry and that Congressional intervention is necessary to undo harm inflicted by these decisions.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{106} SUBJ MATTER: SECURITIES

**Delikat, Michael and René Kathawala.** "Arbitration of Employment Discrimination Claims Under Pre-Dispute Agreements: Will *Gilmer* Survive?" Hofstra Labor and Employment Law Journal; 1998; Fall: pp. 83.

Article discusses the recent tendency of courts to not enforce pre-dispute arbitration agreements when dealing with statutory discrimination claims. The authors examine the challenges to favoring arbitration by federal agencies and Congress in spite of the U.S. Supreme Court holding in



*Gilmer*, and advise employers who want to maintain private mandatory arbitration for employee disputes. The authors foresee a “virtual flood of cases challenging pre-dispute arbitration agreements” until Congress is able to amend statutes to allow discrimination claims to be heard by the courts.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Delikat, Michael and René Kathawaia.** “Mandatory Arbitration: Supreme Court Review of *Wright* Should not Resolve all the Issues.” Employee Relations Law Journal; Winter 1998; 24(4): pp. 101-112.

Authors discuss the rationale behind the Supreme Court’s decision to grant certiorari in *Wright v. Universal Maritime Service Corp.*, 118 S. Ct. 1162, which raised the issue of whether employees subject to a collective bargaining agreement could nevertheless sue an employer under the federal anti-discrimination statutes and claim job bias. The authors discuss recent developments with respect to non-union employees and the enforceability of pre-dispute arbitration agreements. Authors conclude that regardless of the outcome in *Wright*, the disputes in this area will continue.

{94} SUBJ MATTER: LABOR-DISCRIMINATION

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Denenberg, Tia Schneider, et al.** “Reducing Violence in U.S. Schools: The Role of Dispute Resolution.” Dispute Resolution Journal; November 1998; 53(4): pp. 28-35.

Article deals with institutionalized measures for addressing violence committed in American schools. Authors contend that workplace prevention and intervention strategies should be adopted in schools as a way of reducing the chances of violence. Article also examines several intervention and prevention programs that have already been adopted in several school districts throughout the United States.

{134} DISPUTE PREVENTION

**Derains, Yves and Eric A. Schwartz (1998).** A Guide to the New ICC Rules of Arbitration. The Netherlands, Kluwer Law International.

Authors guide the reader article by article through the new ICC rules of arbitration that went into effect on January 1, 1998. The authors draw from their knowledge and experience with the ICC International Court of Arbitration in thoroughly analyzing the new ICC rules. The authors explain how the new ICC rules differ from earlier versions and how the rules are expected to operate in practice.

{92} SUBJ MATTER: INT'L

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Deshazer, Samuel H. and John Cohen.** "Mediating Employment Disputes Under the Disabilities Act." Dispute Resolution Journal; February 1998; 53(1): pp. 28-35.

Article examines the mediation of disability related disputes under the Americans with Disabilities Act (ADA). The author does this by looking at major concepts of Title I of the ADA, including ways in which the mediator may address issues that arise under the Act. The author notes that mediators must be thoroughly competent in the ADA statute and regulations. The author believes employee's rights and employer's legal requirements under the ADA are compatible with facilitative mediation principles and techniques.

{21} MED: RELATED PROCESSES-GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Devinatz, Victor G.** "What Do We Know About Mutual Gains Bargaining Among Educators." Journal of Collective Negotiations; Spring 1998; 27: pp. 79-91.

Author advocates the use of mutual gains bargaining (MGB) as an alternative to traditional collective bargaining negotiations among educators. Article includes eight case studies of the use of MGB by educators and concludes that successful outcomes can occur despite problems between the union and management. In addition, the article examines training in MGB and the use of facilitators in the negotiations.

{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)

{83} SUBJ MATTER: EDUCATION

**DiMatteo, Larry A.** "Resolving International Contract Disputes." Dispute Resolution Journal; November 1998; 53(4): pp. 75-79.

Article examines the effects of the United Nations Convention on Contracts for the International Sale of Goods (CISG) on international arbitral panels. Author contends that the CISG has a solid basis in international trade practices. Author also contends that, when rendering decisions, international arbitral panels will use the principles embodied in the CISG as evidence of customary international law.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{92} SUBJ MATTER: INT'L

**Dreyfus, David.** "Confucianism and Compact Discs: Alternative Dispute Resolution and its Role in the Protection of United States Intellectual Property Rights in China." Ohio State Journal on Dispute Resolution; 1998; 13(3): pp. 947-974.

Article examines the status of intellectual property rights in China. Author suggests that the use of the alternative dispute resolution mechanisms provided for by GATT, the World Trade Agreement, and World Intellectual Property Organization would protect U.S intellectual property rights in China. Author concludes that these dispute resolution mechanisms are preferable to filing suit in the courts of China.

{92} SUBJ MATTER: INT'L

**Dye, Jesse Clayton, Patrick Crowley, and John Evelius.** "Intra-Church Dispute Resolution." Catholic Lawyer; Spring 1998; 38(2): pp. 133-143.

Article describes the dispute resolution process that the Archdiocese of Seattle uses to help settle employment disputes. This process consists of an ombudsman office that uses the resolution methods of conciliation, mediation, fact-finding, and arbitration.

{74} SUBJ MATTER: GENERAL

**Elveris, Idil.** "Binding Third Parties with Arbitration Clauses in the Charter Parties: A Comparison of Turkish and American Cases." Tulane Maritime Law Journal; Summer 1998; 22(2): pp. 625-633.

Author reports that a Turkish case, the *M/V Yasena*, compels Turkish courts to dismiss every case brought against a carrier by a third party holding a bill of lading (receipt) that has incorporated the arbitration clause in the charter party (contract), in effect saying the third party is bound by the terms of the contract although they were not a party to it. In the United States, an arbitration clause speaking of "parties" and "defendant" is broad enough to bind nonsignatory third parties, but one drafted narrowly "between the owners and the charterers" does not bind any party other than owners and charterers. Article explains that the incorporation clause must be specific enough to give notice to its holder that arbitration is required.

{97} SUBJ MATTER: MARITIME

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Emon, Anver M.** "Negotiating Between Two Convictional Systems." Fordham Law Review; March 1998; 66(4): pp. 1283-1297.

According to the author, attorneys who are religiously committed necessarily adopt two convictional systems: legal professional ethics and

their religion's canons. Reconciling these two systems without subjugating one to the other can be difficult. The author articulates a paradigm of negotiation involving "reciprocal translation" between the norms and dogma of one system into the terms familiar to the other. The author argues that this is the only paradigm that adequately deciphers a normative reality honest to both convictions.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Evans, Bruce D.** "Arbitration: Intended and Twisted Practices in Reinsurance." Federation of Insurance & Corporate Counsel Quarterly; Spring 1998; 48(3): pp. 261-271.

Article provides a concise overview of reinsurance contractual agreements that most often include an arbitration clause that specifies the approach to use in any future disputes. In the United States, the industry procedure for arbitration cases is standardized and has afforded permanent solutions to disputes in the reinsurance arena. Author believes that identifying each arbitrator as an independently commissioned person will strengthen this dispute resolution process.

{91} SUBJ MATTER: INSURANCE

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Evans, Robin J.** "The Administrative Dispute Resolution Act of 1996: Improving Federal Agency Use of Alternative Dispute Resolution Processes." Administrative Law Review; Winter 1998; 50(1): pp. 217-233.

Article provides a brief overview of the 1996 amendments to the Administrative Dispute Resolution Act of 1990. Author first examines the success of the original 1990 Act within federal agencies and its shortcomings. The author then explains how Congress has dealt with such problems through the 1996 amendments. In addition, the author encourages further use of the Act by federal agencies based upon previous accomplishments and for Congress to take further steps to provide support to agencies to continue to use dispute resolution techniques.

{144} LEGISLATION

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Fazzi, Cindy.** "Disaster - When it Strikes, ADR Can Come to the Rescue in Resolving Mass-Tort Claims." Dispute Resolution Journal; February 1998; 53(1): pp. 16-18.

News article touting the success of the American Arbitration Association's ADR program which was used to resolve 2,400 of the 25,000 insurance-

related claims which arose as a result of Hurricane Andrew in 1992. Article also addresses other instances of AAA programs used to resolve natural-disaster insurance claims.

{91} SUBJ MATTER: INSURANCE

{110} SUBJ MATTER: OTHER TORTS

**Feinberg, Kenneth R.** "Resolving Mass Tort Claims: The Perspective of a Special Master." Dispute Resolution Journal; February 1998; 53: pp. 10-12.

Article characterizes mass-tort litigation from the author's perspective based on his experience as a court-appointed special settlement master. Author explains the role ADR can play in resolving mass-tort litigation. Author contends that ADR assists in valuing claims that have yet to go to trial, and helps in implementing some type of settlement.

{110} SUBJ MATTER: OTHER TORTS

{91} SUBJ MATTER: INSURANCE

**Feinberg, Kenneth R.** "Reporting from the Front Line - One Mediator's Experience with Mass Torts." Loyola Los Angeles Law Review; January 1998; 31(2): pp. 359-371.

Author gives an overview of his experiences in mass tort litigation and highlights some factors that hinder resolution. Author contends that the use of a formalized settlement process improves the chances of resolution and that the major challenge to the process is getting the parties to sit down together. Author further contends that the inability of a defendant to aggregate the claims and difficulty in determining the value of mass tort claims hinder resolution. Author believes that the availability of a neutral third party (mediator) effectively overcomes potential ethical problems that arise in the allocation of a fixed settlement amount by the plaintiff's attorney to various claimants.

{91} SUBJ MATTER: INSURANCE

{110} SUBJ MATTER: OTHER TORTS

**Feller, David E.** "Compulsory Arbitration of Statutory Discrimination Claims Under a Collective Bargaining Agreement: The Odd Case of Caesar Wright." Hofstra Labor and Employment Law Journal; Fall 1998; 16: pp. 53-82.

Article discusses the case of *Wright v. Universal Maritime Service Corp.*, in anticipation of the Supreme Court's decision. The article predicts the result. Author concludes by indicating that the Supreme Court will reverse

the lower opinion case and possibly modify *Gilmer v Interstate/Johnson Lane Corp.*.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Fernandez, Carmen Collar and Jerry Spolter.** "International Intellectual Property Dispute Resolution: Is Mediation A Sleeping Giant?" Journal on Dispute Resolution; August 1998; 53(3): pp. 62(8).

Article discusses the beneficial use of mediation in international intellectual property disputes between parties that have ongoing business relationships with one another. Specifically, the article discusses when mediation should occur, which qualities are necessary in an international intellectual property mediator, and under which international tribunals parties should conduct the mediation.

{21} MED: RELATED PROCESSES-GENERAL

{92} SUBJ MATTER: INT'L

**Fisher, Morton P., Jr.** "Selected Issues in Retail Leases: The 1998 Hit Parade of Negotiated Clauses." The Practical Real Estate Lawyer; November 1998; 46(6): pp. 67-77.

Article lists ten popular negotiated clauses that landlords and tenants include in the terms of commercial retail leases. Issues include the right of the tenant to sublet leased premises and the right of the landlord to charge fees to set up promotion and marketing funds for tenants.

{76} SUBJ MATTER: COMMERCIAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Franz, Patricia L.** "Habits of a Highly Effective Transformative Mediation Program." Ohio State Journal on Dispute Resolution; 1998; 13(3): pp. 1039-1070.

Note describes some of the policy decisions that must be made when designing a court-connected mediation program. Author advocates the use of transformative mediation in court-connected programs and describes how to implement transformative mediation into an organization. Note provides a thorough examination of transformative mediation.

{21} MED: RELATED PROCESSES-GENERAL

{133} COURT REFORM

**Fraser, John A., III.** "Congress Should Address the Issue of Provisional Remedies for Intellectual Property Disputes Which are Subject to Arbitration." Ohio State Journal on Dispute Resolution; 1998; 13(2): pp.

505-548.

The need for provisional remedies such as injunctive relief in commercial arbitration of intellectual property disputes is identified as a means of accomplishing the twin national policy goals of maintaining investment in U.S. research and development and honoring international intellectual property treaties the U.S. is a party to. The article identifies a conflict in the lower courts over the legality of provisional remedies and proposes congressional action to eliminate the conflict, and to unify national policy.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{76} SUBJ MATTER: COMMERCIAL

**Freyer, Dana H., Barry H. Garfinkel and Hamid G. Gharavi.** "Bilateral Investment Treaties and Arbitration." Dispute Resolution Journal; May 1998; 53(2): pp. 74-78.

Article discusses where a Bilateral Investment Treaty (BIT) applies and how this is an effective way to bring a party not normally subject to arbitration into an arbitration proceeding in a neutral venue. Article discusses different types of BITs; and the differing BITs in various countries. Article also analyzes the enforceability of BITs and what affects this enforceability has on the arbitration. Author contends that where a state refuses to or cannot enter into an arbitration agreement an investor should attempt to use the BITs entered into by that state to show the appropriateness of arbitration.

{92} SUBJ MATTER: INT'L

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Fryer, Joanne T.** "The Case for Private Divorce Mediation." Maine Bar Journal; March 1998; 13(2): pp. 86-87.

Article gives a comparison between court-connected divorce mediation and private divorce mediation in Maine. Author contends that private divorce mediation can be more effective than court-connected mediation because of the following: parties are able to select the mediator; multiple sessions allow for resolution of numerous issues, improved communication between parties, and a well drafted agreement. In addition, the cost between private in-court mediation is not great for those who are represented by counsel.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

{21} MED: RELATED PROCESSES-GENERAL

**Fryling, Robert G. and Edward J. Hoffman.** "Step by Step: How the U.S. Government Adopted the ADR Idea." Dispute Resolution Journal;

May 1998; 53(2): pp. 80-84.

Authors provide an overview of ADR statutes and regulations that have been issued to resolve disputes involving federal government agencies, including the 1990 ADR Act and its 1996 amendments. Other ADR provisions that are summarized include executive orders (Agency Procurement Protests and Civil Justice Reform), policy statements and directives, acquisition regulations, and defense directives/agency implementation.

{87} SUBJ MATTER: GOV'T

**Furmston, Michael.** "Is There a Duty to Negotiate in Good Faith." The Law Quarterly Review; July 1998; 114: pp. 262-263.

Article explores good faith negotiation in England. Author discusses the high costs involved in the contract-making process and cites an Australian case which implied fair negotiation. Author advocates the adoption of a similar practice of good faith negotiation in England.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Gaines, Michelle D.** "A Proposed Conflict of Interest Rule for Attorney-Mediators." Washington Law Review; July 1998; 73(3): pp. 699-729.

Article provides a discussion of developing a conflict of interest rule for the attorney-mediator. Author proposes a comprehensive conflict of interest rule for inclusion in the Rules of Professional Responsibility tailored specifically to attorney-mediators. Author contends a conflict of interest rule would promote impartiality and confidentiality within mediation.

{138} ETHICS: GENERAL

**Galton, Eric.** "Mediation for Collegiate Sports Teams." Dispute Resolution Journal; November 1998; 53(4): pp. 37-39.

Article discusses author's mediation program model for intercollegiate sports teams. Author indicates that mediation would be particularly effective in intercollegiate sports because mediation would foster the emphasis of "stability and collegiality" in college sports. The author discusses a model with players as mediators, and a mediation training session that focuses on identifying the conflict, improving communication, informing the teams of how mediation is effective in resolving disputes, and offering opportunities to sharpen mediation skills through mock-mediations.

{21} MED: RELATED PROCESSES-GENERAL

{107} SUBJ MATTER: SPORTS AND ENTERTAINMENT



**Gamarath, Celia Guizaldo.** "A Lawyer's Guide to Mandatory Arbitration in Illinois." Illinois Bar Journal; 1998; 86(10): pp. 550(6).

Article discusses the development of mandatory arbitration for certain cases in the state of Illinois. The article discusses how arbitration, as mandated by the Mandatory Arbitration Act of Illinois, may be harmonized with rules regarding the rejection of arbitral awards, sanctions, and attorney's fees.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Garwin, Arthur.** "Double Identity: Ethics do not Disappear for Lawyers Who Serve as Mediators." ABA Journal; June 1998; 84: pp. 88.

Article discusses the various professional conduct rules enacted by states with respect to mediation services. Author specifically focuses on the distinction between mediation customers and legal clients, as well as the ethical considerations that dictate maintaining this separation.

{21} MED: RELATED PROCESSES-GENERAL

{138} ETHICS: GENERAL

**Geoghan, Paul.** "Stay Out of Court." Journal of Accountancy; September 1998; 186(3): pp. 77-81.

Article discusses the use of ADR techniques in an accounting context. Author notes the rising number of lawsuits being filed against CPAs and suggests ADR as a means of avoiding litigation. Author explains a few basic ADR techniques and their relative strengths and weaknesses when utilized in the profession of accounting.

{74} SUBJ MATTER: GENERAL

{99} SUBJ MATTER: OTHER PROF MALPRACTICE

**Gershenfield, Walter J.** "Alternative for Labor Arbitrators." Dispute Resolution Journal; February 1998; 53(1): pp. 53(4).

Article reviews career options and alternatives for arbitrators of labor-management disputes who recognize that the labor-management caseload is not growing. Author suggests that labor arbitrators with skills in other areas of alternative dispute resolution may move into the field of mediation or other areas of arbitration. The areas of alternative dispute resolution that may experience an influx of labor arbitrators looking to respecialize are: mediation in statutory cases, fact-finding, traditional grievance arbitration, interest arbitration, arbitration of statutory and non-statutory claims, and commercial disputes.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{93} SUBJ MATTER: LABOR-GENERAL

**Geyer, Thomas E.** "The Vitality of Ohio Laws Designed to Encourage Negotiated Takeovers." University of Dayton Law Review; Spring 1998; 23: pp. 515-558.

Article explores the relationship between Ohio state laws and preemptive federal laws governing corporate takeovers. Author notes that negotiated corporate takeovers tend to minimize disruptions in corporate affairs because state laws provide a systematic method to effectuate change in control. But offerors in hostile takeover situations challenge the constitutionality of these very laws precisely because they encourage negotiations of change in control. The result is disruption of the business affairs of the target in contravention of investors' expectations at the time they commit funds to the corporation. Observing that the states have traditionally enjoyed sovereignty over corporate law and historically have had the authority to regulate corporate takeovers, the author contends that Ohio corporate law, in particular, is better suited to this task than are federal laws. Specifically, the author highlights three Ohio statutes; its Control Share Acquisition Act, its Control Bid Statute, and the Ohio Business Combination Statute, as constitutionally sound and powerful incentives to facilitate changes in control of corporations in Ohio through negotiations rather than hostile takeovers, thereby reducing the disruption of the business affairs of both target and offeror.

{81} SUBJ MATTER: CORPORATE

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Gibeaut, John and James Podgers.** "Prescribing ADR: Report Recommends Mediation, Arbitration in Health Coverage Disputes." ABA Journal; October 1998; 84: pp. 91.

Article provides a short discussion of the ABA Annual Meeting Report and a recap of the year. Authors note that the American Bar Association, the American Arbitration Association, and the American Medical Association all recommended mediation and arbitration for disputes over health care coverage for patients.

{74} SUBJ MATTER: GENERAL

**Gibson, Rankin M.** "What Every Arbitrator Should Know About . . . Issuing a Subpoena." Dispute Resolution Journal; February 1998; 53(1): pp. 79-82.

Article provides an examination of the pertinent federal and state legislation in order to clear up the uncertainty and confusion that exists regarding the

scope of an arbitrator's subpoena power. The author uses the Federal Arbitration Act to explain subpoena power in the federal context, and Ohio law to address subpoena power in the state context. Author concludes by noting that the arbitrator only has the power to issue a subpoena. The enforcement of the subpoena lies in the court with jurisdiction.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Goodman, Steven S.** "Can You Arbitrate that Employment Claim?" The Practical Litigator; January 1998; 9(1): pp. 15-24.

Article poses and answers a series of questions surrounding the arbitration of disputes between employers and employees, distinguishing the types of employment disputes that can be arbitrated from those that cannot. It begins with an analysis of *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991). The author notes that while the *Gilmer* Court held that employment disputes arising under the ADEA are subject to arbitration, it left open the issue of the arbitrability of employment disputes in other contexts. For instance, the *Gilmer* Court did not address Section I of the FAA, which excepts the contracts of seamen, railroad workers, and other employees engaged in foreign and interstate commerce from its scope. The author traces the development of jurisprudence among the lower federal courts regarding Section One, however, and concludes that they have eliminated it as a barrier to arbitration of employment disputes over contracts that affect interstate commerce. Author goes on to survey the case law holding that other forms of statutory employment disputes, such as gender discrimination and sexual harassment claims arising under Title VII of the Civil Rights Act of 1964, are arbitrable. He canvasses some of the objections raised to arbitration of employment disputes by both employers and employees, and provides the responses to them. The Article is designed as a practical tool to educate litigators as to these issues, and includes a discussion of discovery procedures often used in the arbitration of employment disputes, the remedies available from an arbitrator, and the scope and possibilities for review of arbitral awards.

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Goodman, Lee Hugh.** "The Case of the Disappearing Ink." The Federal Lawyer; September 1998; 45(8): pp. 17-18.

Author discusses negotiation strategies that provide results. Author relates the story of an attorney whose "adversary" continues to make concrete verbal agreements and then supplies a written agreement with no substance.

Author explains that negotiating requires strong listening skills. If agreement cannot be reached and both parties are truly interested in reaching an agreement, it is probably the result of game playing. Author claims that by listening to the demands of the other party and addressing those demands, parties can come to agreements faster and with a better understanding of the agreement.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Gould, Nicholas and Michael Cohen.** "ADR: Appropriate Dispute Resolution in the U.K. Construction Industry." Civil Justice Quarterly; April 1998; 17: pp. 103-127.

Article explores the decline in the United Kingdom of the traditional role of architects and engineers in dispute resolution of conflicts arising in the construction industry. The article discusses unique factors to conflicts in this arena such as the relationship of the parties and the long-term high-capital nature of major works projects. The authors suggest that the Arbitration Act of 1996 was a response to a perceived failure of traditional dispute resolution to meet the needs of the construction industry for timely and final resolution of disputes arising in the midst of a construction contract. The article incorporates the significant use of statistical data.

{80} SUBJ MATTER: CONSTRUCTION

**Gourlay, Aimee and Jennelle Soderquist.** "Mediation in Employment Cases is Too Little Too Late: An Organizational Conflict Management Perspective on Resolving Disputes." Hamline Law Review; Winter 1998; 21(2): pp. 261-286.

Article discusses ideologies behind "conflict culture" and conflict management within organizations. Authors assert that before dispute resolution processes are effectively implemented, conflict culture must be carefully analyzed. Authors note that four elements must be present if a preventive dispute resolution process is to be effectively designed. These elements include: organic development based on stakeholders' interests; stakeholder participation and support; creativity; and adequate knowledge and skills of the organization members. Authors discuss the risks in changing the way conflict is managed within an organization.

{74} SUBJ MATTER: GENERAL

**Green, Robert A.** "Antilegalistic Approaches to Resolving Disputes Between Governments: A Comparison of the International Tax and Trade Regimes." Yale Journal of International Law; Winter 1998; 23(1): pp. 79-

139.

Article analyzes the mechanisms that are available to international regimes for dealing with and settling inter-governmental disputes, and evaluates proposals for new innovations. Author discusses the legalistic or quasi-judicial dispute settlement system that has developed under the General Agreement on Tariffs and Trade, and contrasts it to the structure of bilateral income tax treaties, which, focuses on settling disputes through "anti-legalistic" means, such as through negotiation and/or consultation. Author contends that the costs and benefits of a particular dispute settlement system must be weighed against each other in order to determine its effectiveness in a given situation.

{92} SUBJ MATTER: INT'L

{108} SUBJ MATTER: TAX

**Gregoire, Christine.** "Resolving Disputes Outside the Courthouse." Washington State Bar News; July 1998; 52: pp. 30.

Author summarizes the advantages of dispute resolution and how to utilize the dispute resolution process successfully. Author solicits support and involvement in community dispute resolution programs such as the peer mediation program that she discusses in the article. Author supports the use of Law Day to advance dispute resolution in assorted situations.

{74} SUBJ MATTER: GENERAL

**Grodin, Joseph R.** "On the Interface Between Labor and Employment Law." Berkeley Journal of Employment and Labor Law; Winter 1998; 19(2): pp. 307-314.

Article discusses employment arbitration in the union setting. Author states that there is a tension between collective representation and individual statutory rights. Author discusses whether *Alexander v. Gardner-Denver* is still good law in light of the *Gilmer v. Interstate-/Johnson Lane Corp.* decision. The author believes that *Gardner-Denver* is still good law and that the United States Supreme Court should re-affirm it.

{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)

**Gruenberg, Gladys W., Joyce M. Najita and Dennis R. Nolan (1998).** The National Academy of Arbitrators: Fifty Years in the World of Work. Washington D.C., Bureau of National Affairs Books.

Book traces the role of the National Academy of Arbitrators (NAA) as a primary force in shaping America labor arbitration. Authors track the evolution of the process and the profession of labor arbitration. Authors

explain the stages of organizational development of the NAA since its inception in 1947.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{93} SUBJ MATTER: LABOR-GENERAL

**Guruswamy, Lakshman.** "The Promise of the United Nations Convention on the Law of the Sea (UNCLOS): Justice in Trade and Environment Disputes." Ecology Law Quarterly; May 1998; 25(2): pp. 189-227.

Article discusses the tension created by International environmental law institutions, which, due to lack of authority and international jurisdiction, rely on the World Trade Organization and GATT to resolve disputes. This is said to be problematic because under WTO/GATT the application of substantive law pays little attention to the mission of international environmental law institutions and view their trade restrictions as obstructions to the liberalized WTO/GATT trade regime. Author contends there are alternative ways for international environmental law institutions to bring their disputes without being subject to the bias of WTO/GATT.

{92} SUBJ MATTER: INT'L

**Guthrie, Chris and James Levin.** "A "Party Satisfaction" Perspective on a Comprehensive Mediation Statute." Ohio State Journal on Dispute Resolution; 1998; 13(3): pp. 885-906.

Article addresses the need for a party satisfaction perspective when drafting mediation legislation. Authors examine empirical research on party satisfaction and discuss factors that affect satisfaction with mediation. Noting that party satisfaction is an essential criterion for mediation legislation drafters to consider, the authors suggest how legislators might draft provisions in light of party satisfaction

{21} MED: RELATED PROCESSES-GENERAL

{144} LEGISLATION

**Haagen, Paul H.** "New Wineskins for New Wine: The Need to Encourage Fairness in Mandatory Arbitration." Arizona Law Review; Fall 1998; 40(3): pp. 1039-1068.

Article discusses the use of mandatory pre-dispute arbitration clauses to avoid litigation. Article addresses the effects of the United States Supreme Court's "reinterpretation" of the Federal Arbitration Act (FAA) of 1925 and how it has impacted various institutions and groups. Author believes that some balance must be restored in this area of law and asserts that it can be done by imposing requirements on the party who wishes to compel

arbitration.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Halpern, Richard G.** "Settlement Negotiations: Taking Control." Trial; February 1998; 34: pp. 64-66.

Article discusses obstacles for plaintiff's counsel when negotiating satisfactory settlements. Author provides suggestions and various tactics for plaintiff's counsel on how to defeat obstacles successfully.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Harper, Michael C.** "Defining the Economic Relationship Appropriate for Collective Bargaining." Boston College Law Review; March 1998; 39(2): pp. .

Article discusses the failure of the NLRA to adequately protect large numbers of employees in "peripheral or segmented employment arrangements." These include: independent contractors; leased employment agency employees; and employees of independent firms engaged in subcontracting. The author calls for amendments to the NLRA definition of employee, the closing of the loophole that allows employers to evade collective bargaining by subcontracting out supervisory authority, and modification of the successorship law.

{93} SUBJ MATTER: LABOR-GENERAL

**Hartley, Roger C.** "Reconceiving the Role of Section 8(B)(1)(A)—1947-1997: An Essay on Collective Empowerment and the Public Good." Catholic University Law Review; Spring 1998; 47(3): pp. 825-876.

Article analyzes the impact of the Taft-Hartley Act with respect to collective bargaining and labor relations law and how it has been interpreted by courts and the National Labor Relations Board (NLRB) since its enactment. Author asserts that the legislative history of section 8(b)(1)(A) of the Act supports a far more limited role for that section than what the NLRB has given it in union discipline cases. Author believes that due to dramatic changes in state control over union discipline during the last thirty years, workers have become substantially disadvantaged in dealings with their employers with regard to employment issues.

{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)

{144} LEGISLATION

**Hartman, Susan D.** "Mediation of Disputes Arising in Adult Guardianship." Res Gestae; April 1998; : pp. 41-44.

Article examines the use of mediation in facilitating adult guardianship cases. Author concludes that in many instances mediation can better resolve the delicate issues surrounding the appointment of an adult guardian by improving communication and preserving family relationships.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

{21} MED: RELATED PROCESSES-GENERAL

**Harvey, Peter E.** "ADR: An Evolutionary Process." The Advocate; July 1998; 56(4): pp. 545-550.

Article portrays ADR as an evolutionary process. The author contends that ADR must continue to change as new innovations develop. Author warns that ADR must remain timely, cost-effective, and leave parties with the sense that justice has been done in order for any form of ADR to work. Author believes the competing elements of justice and innovation make creating new methods and improving old methods of ADR difficult.

{74} SUBJ MATTER: GENERAL

**Hayes, Kristine L.** "Prepostal Prevention of Workplace Violence: Establishing an Ombuds Program as One Possible Solution." Ohio State Journal on Dispute Resolution; Fall 1998; 14(1): pp. 215-233.

Article discusses the alarming amount of workplace violence that occurs each year. Author explores the wide range of potential liability an employer can face when violence occurs in the workplace. Author concludes that the use of an ombuds, to serve as a neutral investigator and mediator for workplace disputes, could substantially decrease the amount of workplace violence that occurs each year.

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{145} OMBUDSPERSON

**Hayford, Stephen L.** "A New Paradigm for Commercial Arbitration: Rethinking the Relationship Between Reasoned Awards and the Judicial Standards for Vacatur." George Washington Law Review; March 1998; 66(3): pp. 443-507.

Article provides an overview and analysis of the law of vacatur and its employment in a reassessment of today's framework for commercial arbitration. Author contends that a new framework would facilitate the institutionalization of substantive reasoned awards in commercial arbitration and focus parties' attention on the true contractual nature of the process. Author supports the development of a new paradigm as a means of ensuring the long term viability of the commercial arbitration process.



{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL  
 {76} SUBJ MATTER: COMMERCIAL

**Healy, Peg.** "The Mediation Maze: A Guide to California's Family Courts in the Ten Most Populous Counties." California Lawyer; May 1998; 18(5): pp. 37-39.

Article highlights the huge disparity among California counties in the way custody and visitation rights are handled. A chart is included to help attorneys navigate their way through the ten listed jurisdictions. Author contends that despite the differences in procedure, each county requires a disagreeing couple to obtain a mediator. Author concludes that, overall, mediation has been successful.

{21} MED: RELATED PROCESSES-GENERAL  
 {85} SUBJ MATTER: FAMILY (DOMESTIC REL)

**Heflin, Howell.** "Using the ADR Toolbox to Repair Mass Torts." Dispute Resolution Journal; February 1998; 53(1): pp. 25(2).

Article identifies mass-tort litigation as playing a major role in crowding court dockets. Author advocates exploring the expansion of ADR in mass-tort conflicts. Author briefly discusses some ways that ADR can be incorporated into the various stages of a dispute.

{110} SUBJ MATTER: OTHER TORTS

**Herman, Gregg.** "10 Rules for Effective Domestic Negotiations." The Practical Litigator; May 1998; 9(3): pp. 41-43.

Author develops a set of guidelines designed to promote an atmosphere conducive to negotiation and settlement in divorce cases. Suggested tactics range from refraining from issuing ultimatums and deadlines, to remaining cordial, avoiding anger and making voluntary disclosures. The article also discusses tactics to apply when an opposing party acts contra to these guidelines.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL){1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Herzog, Robert.** "ADD: Attention Deficit Disorder or an Arbitrator's Disciplinary Dilemma." Dispute Resolution Journal; November 1998; 53(4): pp. 20-27.

Article discusses what Attention Deficit Disorder (ADD) is, how it is dealt with by the EEOC and under the Americans with Disabilities Act (ADA), and how litigation and arbitration handle these disputes. Author predicts

that as the law and arbitration develop, ADD will hopefully become better handled through arbitration proceedings.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Hill, Jonathan** (1998). The Law Relating to International Commercial Disputes. London, LLP Reference Publishing.

Book discusses the resolution of international commercial disputes, concentrating on; jurisdictional issues, choice of law questions, and the recognition and enforcement of judgments and awards. The author analyzes these issues under the Brussels and Lugano conventions, the "modified" convention, traditional rules, admiralty proceedings, and international arbitration methods.

{92} SUBJ MATTER: INT'L

{76} SUBJ MATTER: COMMERCIAL

**Hill, Norma Jeanne**. "Qualification Requirements of Mediators." Journal of Dispute Resolution; Spring 1998; 1998(1): pp. 37-51.

Article discusses current and proposed qualification requirements with respect to the certification of mediators. The author limits her discussion to moneymaking (non-volunteer) mediators. Specifically, the author focuses on the selection criteria of educational degrees, performance on skills-based tests, and the screening of applicants via aptitude-attitude tests. She examines each of these criteria with respect to their effectiveness, cost, and discriminatory nature. Author asserts that the selection process chosen should ensure that a diverse mediator pool results.

{21} MED: RELATED PROCESSES-GENERAL

**Hill, Marvin F., Jr. and Tammy M. Westhoff**. "I'll Take it For What its' Worth -The Use of Hearsay Evidence by Labor Arbitrators: A Primer and Modest Proposal." Journal of Dispute Resolution; Spring 1998; 1998(1): pp. 1-35.

Article deals with various problems that are likely to be encountered during labor arbitration. The authors assert that arbitrators currently do and should allow various forms of hearsay evidence, but that such arbitrators should not allow all hearsay evidence. The authors conclude that if the party with the burden of proof can provide direct evidence to support a dismissal, but does not provide such evidence, then hearsay evidence (although admissible) is insufficient to support a discipline case.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{93} SUBJ MATTER: LABOR-GENERAL

**Hoellering, Michael F.** "Administering International Arbitration Proceedings: Explanation of How the AAA's Program Works." Dispute Resolution Journal; February 1998; 53(1): pp. 64-69.

Author believes that increasing global market interdependence results in an increasing need for effective dispute resolution on an international scale. Article highlights the ways in which the American Arbitration Association (AAA) is addressing this need. This includes a discussion of the AAA's creation of the International Center for Dispute Resolution and its approach to meeting the needs of international disputes

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{92} SUBJ MATTER: INT'L

**Hoellering, Michael F.** "International Arbitration Agreements: A Look Behind the Scenes." Dispute Resolution Journal; November 1998; 53(4): pp. 64-70.

Author examines how the courts and arbitral institutions have shaped the role of the arbitrator in the area of disputes arising out of international commercial and financial transactions. Author advises how to draft an arbitration clause that ensures efficiency and fairness.

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Hollyfield, John S.** "Negotiating Landlord's Services (with forms)." The Practical Real Estates Lawyer; March 1998; : pp. 29-38.

Very brief article encourages the proactive negotiation of commercial tenants with landlords for the provision of "basic" (e.g. heating and cooling) and "special" (e.g. signage) services. Appendices following the article contain sample lease addenda for guidance in such negotiations.

{76} SUBJ MATTER: COMMERCIAL

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Hood, Anna.** "Commercial Contracts, Lawyers and Alternative Dispute Resolution: A Proactive Habit." Australian Dispute Resolution Journal; May 1998; 9(2): pp. 129-138.

Article focuses on the use of ADR, especially expert determination and mediation, in commercial settings. Author discusses when ADR clauses are beneficial for use in commercial contracts and the utility of such clauses. Author provides insight for commercial lawyers on how to select an appropriate ADR clause.

{76} SUBJ MATTER: COMMERCIAL

{21} MED: RELATED PROCESSES-GENERAL

**Horlick, Gary N.** "The Consultation Phase of WTO Dispute Resolution: A Private Practitioner's View." International Law; Fall 1998; 32: pp. 685.

Article discusses the consultation phase of WTO dispute resolution. Author analyzes the WTO dispute resolution from the view point of private practitioner as opposed to that of a government official. Article focuses on articles XXII and XXIII of GATT and GATT's consultation requirements.

{92} SUBJ MATTER: INT'L

**Hubbell, James W.** "Arbitrating Employment Claims After *Gilmer*." Colorado Lawyer; January 1998; 27: pp. 41-42.

Article discusses the impact of *Gilmer v. Interstate/Lane Corp.* and other case law dealing with employment arbitration agreements. Author contends that although *Gilmer*'s impact on employment disputes is significant, the actual use of arbitration has been sporadic. Author argues that arbitration is not well suited for all employment situations. Author recommends that attorneys keep the drawbacks of arbitration in mind when advising clients.

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Hulett, Stanley W.** "Restructuring the Electrical Utility Industry." Dispute Resolution Journal; November 1998; 53(4): pp. 26-27.

Article briefly addresses using ADR methods in the deregulation of the electrical utility industry. Author contends that ADR will play an important role in efficiently opening the electricity market to competition. Article also mentions the importance of several procedures set up by federal and state regulatory agencies to deal with deregulation disputes.

{103} SUBJ MATTER: PUBLIC UTILITIES

**Hunt, Isaac C., Jr.** "Securities Arbitration: Issues of Interest." Arizona Law Review; Fall 1998; 40(3): pp. 1095-1100.

Article addresses proposed changes to the securities arbitration process conducted by the National Association of Securities Dealers, Inc. and other self-regulatory organizations. Article focuses on two primary issues: (1) the merits of a proposed punitive damages cap, and (2) the appropriateness of mandatory arbitration for employment discrimination claims. Author supports arbitration for customer complaints and believes that punitive damages may be awarded by arbitrators as suitable remedies for certain

conduct. However, author believes that the practice of using mandatory arbitration for employment discrimination claims should be ended because, among other reasons, alleged victims of discriminatory conduct deserve to have their "day in court."

{94} SUBJ MATTER: LABOR-DISCRIMINATION

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Hutcheson, Paul.** "Mediation and Lawyers – A likely Marriage?" The New Zealand Law Journal; June 1998; : pp. 215-217.

A mediator discusses his views as to whether lawyers should be mediators. Author contends that lawyers may not be the best mediators, rather the parties themselves are the most appropriate people to find the solutions.

{21} MED: RELATED PROCESSES-GENERAL

**Inns of Court School of Law (1998).** Negotiation. Great Britain, Blackstone Press Limited.

Book provides the reader with grounding in the theory of negotiation. Book includes material on the different contexts and types of negotiation and touches briefly on other aspects of negotiation.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Isa, John P.** "Testing the NAALC's Dispute Resolution System: a Case Study." American Journal of Gender and the Law; Summer 1998; 6(3): pp. 615-652.

Author discusses the North American Agreement on Labor Cooperation ("NAALC") and its failure to protect Mexican workers from pregnancy discrimination. The author recommends that human rights organizations continue to file submissions regarding allegations of workers' rights violations with the U.S. National Administrative Office ("NAO") to test the NAALC dispute resolution system. Finally, the article concludes that countries interested in NAFTA should be required to sign the NAALC and uphold their own domestic labor laws.

{93} SUBJ MATTER: LABOR-GENERAL

{92} SUBJ MATTER: INT'L

**James, Kevin.** "Administrative Law: Negotiating with Regulatory Agencies." California Lawyer; November 1998; 18: pp. 33.

Article urges lawyers to incorporate practices into their negotiations that will make them more effective advocates. Author includes such practices as preparing thoroughly, focusing on the specific violations alleged,

safeguarding credibility, and being a problem solver. Author also describes several mistakes frequently made in these proceedings.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL  
{104} SUBJ MATTER: REGULATORY

**Jones, Timothy.** "New Framework for Mediation." Solicitors Journal; May 8, 1998; 142(18): pp. 418, 420.

Article briefly examines procedural effects of the British Parliament's passage of the Arbitration Act of 1996. Author argues that the Act, as interpreted by British courts, gives unfettered procedural freedom to arbitration proceedings. Author examines several important court decisions dealing with the Act's effect on stays, statutes of limitation, and the appointment of arbitrators.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Kaplinsky, Alan S. and Mark J. Levin.** "Consumer Financial Services Arbitration: Current Trends and Developments." Business Lawyer; May 1998; 53(2): pp. 1075-1084.

Article describes how a growing number of lenders and financial institutions are now incorporating arbitration clauses into their consumer contracts and why it is beneficial for both parties to do this. Article summarizes some recent federal and state decisions that drive lenders to use consumer arbitration programs, as well as recent decisions of courts that refuse to uphold arbitration provisions found to be unconscionable or in conflict with federal or state laws. Author contends a fair and even handed arbitration program is effective in fending off meritless lawsuits.

{79} SUBJ MATTER: CONSUMER

{76} SUBJ MATTER: COMMERCIAL

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Kauffman, Nancy and Barbara Davis.** "What Type of Mediation Do You Need?" Dispute Resolution Journal; May 1998; 53(2): pp. 8-14.

Article discusses the importance of understanding the differences in types of mediation and choosing the one best suited for a particular dispute. The authors propose questions to be asked to assess mediator style. Also listed are questions a disputant can ask himself to determine the goals of his mediation in order to choose a potential mediators.

{21} MED: RELATED PROCESSES-GENERAL

**Keeva, Steven.** "Inventing Solutions." ABA Journal; January 1998; 84:

pp. 58-63.

Author discusses idea that lawyers must sometimes turn away from conventional lawyering tactics to solve client needs. Article quotes several lawyers who discuss their methods and success in applying sometimes seemingly risky methods. Examples of tactics are provided for shortening litigation as a plaintiff's lawyer, early disclosure of information to prevent criminal litigation, counseling to client's emotional needs in family law, and marketing a new firm.

{74} SUBJ MATTER: GENERAL

**Kelley, H. David, Jr.** "Practical Concerns Affecting the Arbitration of Statutory Claims." Dispute Resolution Journal; November 1998; 53(4): pp. 50-55.

Article provides attorneys representing an aggrieved party a list of concerns that must be considered by counsel to ensure that the arbitration process is conducted appropriately. Author states that counsel should take into account the traditional reasons to arbitrate a claim (e.g. the cost effectiveness and expedience of the arbitration process), should ensure that the arbitrator is impartial, should ensure that the statutory remedies of the aggrieved party are preserved, and should investigate the possibilities of judicial review of awards resolving statutory claims.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Kelly, Mayanne.** "The Benefit of the Doubt (Negotiators: Are Men from mars and Women from Venus)." Australian Dispute Resolution Journal; May 1998; 9(2): pp. 91-93.

Article presents author's anecdotal analysis of gender issues in negotiation. Author examines how the gender of the negotiator and of the parties involved have affected the negotiation method and tone of discussions in which she acted as a negotiator.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Kennedy, Gavin.** (1998). Negotiation In Business. Aldershot, England, Gower.

Author studies the assertions of various authors in the field of negotiation. He discusses the reasons why certain negotiation strategies may be most effective in certain situations, but inappropriate in others. The book also contains a short case study and examination to test the reader's understanding of the material covered.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Kennedy-Grant, Tomas.** "Transnational Litigation and Arbitration." New Zealand Law Journal; 1998; January: pp. 7-10.

Article provides a brief overview of the evolution of transnational litigation and transnational arbitration. Author states that an increase in trade has resulted in states allowing their institutions to proceed against foreigners, as well as to allow the enforcement of foreign decisions within their territory. Author notes that the development of transnational arbitration primarily took place after 1947. The author gives an overview of how the United Nations, the World Bank, the World Intellectual Property Organization, the development of international and regional trade dispute procedures, and the establishment of regional and national centers have contributed to modern international arbitration law.

{92} SUBJ MATTER: INT'L

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Kim, Albert Y.** "Comment, Arbitrating Statutory Rights in the Union Setting: Breaking the Collective Interest Problem Without Damaging Labor Relations." University of Chicago Law Review; Winter 1998; 65(1): pp. 225-254.

Article provides an overview of the institution of labor arbitration. Author specifically addresses the problems he sees between statutory employment discrimination claims and the collective interest in labor arbitration. Author contends that employment discrimination disputes should be subject to arbitration only when the individual can control the settlement process and when minimum procedural safeguards are present.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{93} SUBJ MATTER: LABOR-GENERAL

**Kirk, Kathy.** "Mediation Training: What's the Point, Are the Tricks Really New, and Can an Old Dog Learn?" Washburn Law Review; Spring 1998; 37(3): pp. 637-653.

Article provides a "sermon" on the importance of providing mediation training to law students and attorneys. Author's justifications encompass practical, systemic, personal, and ethical reasons for training. In addition, author examines and describes in detail the mediation training provided by the Kansas Bar Association's CLE Committee. Author contends that use of mediation training will benefit the law community and society as a whole and improve the present perception of lawyers.

{21} MED: RELATED PROCESSES-GENERAL



**Knoll, James.** "Protecting Participants in the Mediation Process: The Role of Privilege and Immunity." Tort & Insurance Law Journal; Fall 1998; 34(1): pp. 115-130.

Article posits that in light of the loss of evidentiary or procedural protections in mediation, there are two potential safeguards in the mediation process. Author argues that confidentiality and the availability of immunity for the mediator provide significant protections to the parties in the mediation process. Author notes, however, that participants in the mediation process need to keep apprised of what their particular jurisdiction offers for mediation protection.

{21} MED: RELATED PROCESSES-GENERAL

{132} CONFIDENTIALITY

**Knoll, David D.** "Structuring International Projects: The Role of the International Business Lawyer." Australian Law Journal; February 1998; 72: pp. 125-136.

Article addresses potential conflicts arising from business negotiations across international borders. Author advocates negotiation skills and contract drafting considerations as essential to building business relationships. Author gives advice on potential problems with employing certain ADR processes in international business negotiations.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

{92} SUBJ MATTER: INT'L

**Kolkey, Daniel M.** "It's Time to Adopt the UNCITRAL Model Law on International Commercial Arbitration." Transnational Law and Contemporary Problems; Spring 1998; 8: pp. 3-17.

Article advocates the adoption of the Model Law governing international arbitration agreements drafted and approved by the United Nations Commission on International Trade Law (UNCITRAL). The author contends that while the Federal Arbitration Act (FAA) functions reasonably well at the domestic level, it is no longer appropriate for the resolution of international arbitral disputes. It leaves unresolved far too many issues germane to international arbitration and creates uncertainty in that area with respect to the degree to which it shares jurisdiction with the arbitration laws of the states of the United States. Adoption of the UNCITRAL Model Law, the author argues, would remedy those problems. He suggests that adoption of the Model Law would provide (1) comprehensiveness (it addresses issues not dealt with by the FAA, such as arbitrator disclosure obligations); (2)

preemption of state arbitration laws so as to eliminate the uncertainty surrounding questions of the states' jurisdiction over arbitrations conducted in the U.S.; (3) uniformity of procedural and substantive law governing international commercial arbitrations in the United States; and (4) an internationally recognized, and therefore familiar, legal regime in the United States to control international arbitral proceedings.

{92} SUBJ MATTER: INT'L

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Kravis, Jeffrey.** "ADR and Suspected Fraudulent Claims." Dispute Resolution Journal; August 1998; 53(3): pp. 20-25.

Article examines the use of mediation as an alternative to litigation in discovering fraudulent claims. The author believes that mediation is preferable to litigation in that mediation reveals the central issues more quickly and effectively than litigation. Specifically, the rapid disclosure of information in a safe environment stemming from mediation will often lead to settlement before large sums of money are expended in litigation.

{21} MED: RELATED PROCESSES-GENERAL

**Krugler, Beth M.** "ADR Update: Are You Maximizing All ADR Has To Offer?" Texas Bar Journal; December 1998; 61: pp. 1120-1121.

Article describes scenarios that seem hard to resolve and suggests Arb-Med as a solution for solving difficult cases. Author discusses what Arb-Med is, how it works, how to set it up, and when it should be used. Author also urges its use in specific circumstances such as with highly emotional issues or where the chances for mediation are slim.

{21} MED: RELATED PROCESSES-GENERAL

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Kruk, Edward.** "Power Imbalance and Spouse Abuse in Divorce Disputes: Deconstructing Mediation Practice Via the 'Simulated Client' Technique." International Journal of Law, Policy and the Family; April 1998; 12(1): pp. 1-14.

Article summarizes a study on power imbalances in divorce mediation. The researchers utilized a 'simulated client' approach, in which the mediating parties were actually the researchers assuming the roles of husband and wife. The author found that the mediators typically adopted an interventionist approach, as opposed to a neutral approach, in an effort to protect the interests of the weaker party. However, the author believes that this interventionist approach is actually detrimental and disempowering

because it fails to actively involve the weaker party in the mediation process.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

{21} MED: RELATED PROCESSES-GENERAL

{147} POWER IMBALANCE

**Kwapich, Christie.** "Note, Developing a Model Grievance Procedure for Addressing Funding Problems: A Case Study of Title I of the Ryan White Comprehensive AIDS Resource Emergency Act." Ohio State Journal on Dispute Resolution; 1998; 13(2): pp. 639-674.

Note provides a detailed analysis of factors to consider when developing a local grievance procedure to handle disputes over the disbursement to local service providers of grant monies obtained under federal AIDS programs. Author examines the requirements established by Congress as well as the model grievance procedure established by the Department of Health and Human Services.

{87} SUBJ MATTER: GOV'T

**L'Heureux-Dube, Claire.** "A Response to Remarks by Dr. Judith Wallerstein on the Long-term Impact of Divorce on Children." Family and Conciliation Courts Review; July 1998; 36(3): pp. 384-391.

Article advocates allowing children to actively participate in the judicial process by looking to the best interests of the child. This involves confronting underlying assumptions about children and treating children as equals.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

**Landrum, Michael A. and Dean A. Trongard.** "Judicial Morphallaxis: Mandatory Arbitration and Statutory Rights." William Mitchell Law Review; 1998; 24: pp. 345-406.

Note provides an overview of the past, present, and future direction of arbitration, and proposes a uniform code of arbitration. Note includes a look at how statutory and case law affect arbitration, the evolution of judicial tests for arbitration agreements, consumer and non-collective bargaining agreements of employment disputes, and confusion in the field of arbitration. Concluding that the current path of arbitration is confused and chaotic, the authors suggest that the drafting committee of the Uniform Arbitration Act organize the code around transaction dynamics in a way similar to the Uniform Commercial Code. This approach, the authors argue, will restore arbitration to its intended status.

## {44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Lanni, Adriaan.** "Protecting Public Rights in Private Arbitration." Yale Law Journal; January 1998; 107(4): pp. 1157-1162.

Author calls for public access to private arbitration awards that stem from public law issues. Since the Supreme Court held that an employee's statutory and civil rights claims can be subjected to compulsory arbitration in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991), a vast menu of courts have mechanically enforced mandatory arbitration clauses, irrespective of any inequities that might result from the use of a particular arbitration system. However, the author highlights the opinion of Judge Edwards in *Cole v. Burns International Security Services*, 105 F.3d 1465 (D.C. Cir. 1997) as a reading of *Gilmer* which will ensure that mandatory arbitration clauses can be limited as a means of insulating the rights of employees to a neutral arbitrator, due process in the arbitration proceedings, and judicial review of employees' statutory discrimination claims. The author argues, however, that the *Cole* court did not go far enough by stopping short of requiring that private arbitration awards be published and made accessible to the public. Following dicta in *Gilmer*, the *Cole* court required that the parties adhere to the due process standards established by the New York Stock Exchange arbitration rules as a minimum protection on the enforcement of arbitration agreements. But, the author contends, provisions for fair arbitrator selection, equitable relief, and bounded discovery overlook the need for public disclosure of arbitration awards, which is not mandated by the arbitration rules of the American Arbitration Association. The author calls for public access to arbitration awards to ensure that information regarding employees' statutory claims is not relegated solely to a private sphere, to generate uniform standards among the policies of employers, to spawn the creation of precedent, and to aid in the assessment of arbitration results.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Lee, Terry.** "So What are We Fixing? An Argument Against Mandatory Fee Arbitration." Washington State Bar News; May 1998; 52(5): pp. 25(2).

Article argues against the proposed Washington State Bar rule calling for a mandatory arbitration fee. The author posits that a mandatory fee will invite abuse of the system, create extra work, and unduly burden small practitioners. Author concludes that the rule unfairly slants in favor of fee disputants and could result in adverse action by attorneys, such as requiring

clients to pay fees up front.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Levine, Stewart** (1998). Getting to Resolution: Turning Conflict Into Collaboration. San Francisco, Berrett-Koehler Publishers.

Book is written to assist groups in resolving conflicts. The author's basic premise is that "conflict is expensive," and that the current system "breeds" even more conflict. The book provides a model for resolution and a case study that applies this model. The author also provides in-depth discussions of the factors that provide the foundation to this model to ensure its applicability. The author concludes by providing an explanation of how this model is integrated into the legal system and advises when the group may need to seek professional assistance.

{74} SUBJ MATTER: GENERAL

**Lewis, Charles B. and Brent A. Hannafan.** "Manifest Disregard of The Law: Standard of Review for Domestic Arbitration Awards." CBA Record; May 1998; 12(4): pp. 52-59.

Article examines the vitality and validity of the common law authority of courts to vacate arbitration decisions. The author notes that the future of this common law authority remains unclear. He discusses several problems with the idea of common law vacatur, including inconsistent application by the courts and its inherent conflict with the principles of arbitration.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Lewis, Roy.** "The Employment Rights (Dispute Resolution) Act 1998." Industrial Law Journal; September 1998; 27(5): pp. 214-219.

Article provides a concise overview of The Employment Rights (Dispute Resolution) Act of 1998. Author discusses the strengths and weaknesses of the proposed Act and stresses the uncertainty surrounding the Act due to its wide-ranging criteria.

{144} LEGISLATION

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Liang, Bryan A.** "Understanding and Applying Alternative Dispute Resolution Methods in Modern Medical Conflicts." Journal of Legal Medicine; September 1998; 19(3): pp. 397-430.

Article analyzes the use of ADR techniques in medical contexts beyond

malpractice. Article provides three medical scenarios and evaluates which conflict resolution technique would best serve the parties involved. Author also provides an economic analysis of when ADR would be the most appropriate resolution strategy. Lastly, the author suggests that ADR should be used more frequently in nonmalpractice health care disputes.

{98} SUBJ MATTER: MEDICAL MALPRACTICE

**Lichtenbaum, Peter.** "Procedural Issues in WTO Dispute Resolution." Michigan Journal of International Law; Summer 1998; 19: pp. 1195-1274.

Article identifies the significant procedural issues that are currently of interest in WTO dispute resolution and discusses the future of this system. Author provides background on the WTO dispute resolution system and its origins in GATT. Author then analyzes remedies that the panel may authorize and issues that arise at each step of the resolution process: before and during panel review. The article also discusses issues arising in the context of appellate review of a panel decision.

{92} SUBJ MATTER: INT'L

**Lobel, Ira B.** "Opinion Critique of Third-Party Decision-making in ADR Processes." Dispute Resolution Journal; August 1998; 53(3): pp. 76-80.

Article focuses on the ADR procedures in which a third party makes a formal or informal decision. Author criticizes the practice employed by private businesses where parties to a dispute agree to use a mutually acceptable third party to make an expedited ruling on a dispute and thereafter agree to be bound. Author contends that such a process fosters a system of private justice and a corresponding decrease in access to the judicial system. Author concludes that third-party decisionmaking mechanisms of ADR appear to be replacing one judge for another and that such a consequence is at variance with public policy.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Lobel, Ira B.** "What Mediation Can & Cannot Do." Dispute Resolution Journal; May 1998; 53(2): pp. 44-47.

Article analyzes the mediator's role in the settlement of disputes. Author argues that the role of the mediator is only to help parties reach resolution, not to play the role of either advocate or judge. Author believes that a good mediator need not be a content expert or take a role in ensuring a fair resolution; instead the mediator's role is to help the parties evaluate for themselves their positions and point out to the parties advantages and disadvantage of those positions.

## {21} MED: RELATED PROCESSES-GENERAL

**Lock, Ethan.** "The Regulatory Scheme for Player Representatives in the National Football League: The Real Power of Jerry Maguire." American Business Law Journal; Winter 1998; 35(2): pp. 319-347.

Article discusses the unique negotiation system of the professional sports industry, a combination of collective and individual bargaining, and suggests that sports agents are in need of enforceable ethical rules.

{107} SUBJ MATTER: SPORTS AND ENTERTAINMENT

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Longtin, Lynne M.** "The EEOC's Position on Mandatory Arbitration." University of Cincinnati Law Review; Fall 1998; 67(1): pp. 265-293.

The author explores and evaluates the EEOC's position regarding the validity of mandatory arbitration clauses in employment contracts. She considers this position in light of the confusion surrounding the issue that was created in the wake of the United States Supreme Court's decision in *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991). More specifically, she surveys the relevant case law stemming from the federal circuit courts, noting that some circuits have been willing to lend the weight of their authority to mandatory arbitration agreements, while others have severely restricted their use. The author observes, however, that the federal courts have historically given significant deference to the rulings of administrative agencies. Thus, she questions the effect that the EEOC's policy will have on the federal circuits being asked to determine the legal legitimacy of mandatory arbitration clauses when viewed through the lenses of both *Gilmer* and the federal policy favoring arbitration that is established by the Federal Arbitration Act. Ultimately, she contends that the July 10, 1997 EEOC policy statement is "paradoxical" and "ironic" on two grounds: (1) the EEOC opposes mandatory arbitration agreements because they carry the potential to undercut the federal judiciary's power to interpret and enforce federal discrimination laws, while at the same time a number of federal judges have been willing to validate those very agreements; and (2) the EEOC justifies the position set forth in its July 10, 1997 policy statement on the basis of several problems for which the federal courts upholding mandatory arbitration agreements have developed solutions.

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Lorcher, Gino.** "The New German Arbitration Act." Journal of International Arbitration; June 1998; 15(2): pp. 85-93.

Article discusses a recently enacted German law that governs arbitration. The author discusses: 1) the use of arbitration to resolve international disputes; 2) jurisdictional questions under the Act; 3) modifications to the pre-1998 German law; 4) characteristics of the new law; and 6) methods of challenge and enforcement of the arbitral award under the new law. The author concludes that the new law is very acceptable in Germany and abroad.

{92} SUBJ MATTER: INT'L

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Lowry, Randolph.** "Preparing Your Client for Mediation." Dispute Resolution Journal; August 1998; 53(3): pp. 30-36.

Article provides practical suggestions for lawyer and client preparation for the mediation process. These observations are set against a backdrop of personal experiences. Understanding the process from the proper perspective is stressed.

{21} MED: RELATED PROCESSES-GENERAL

**Lucero, Margaret A. and Robert E. Allen.** "Fighting on the Job: Analysis Of Recent Arbitration Decisions." Dispute Resolution Journal; August 1998; 53(3): pp. 50(8).

Article discusses the conflict between the just cause standards regarding employee discipline of physical altercations on the job with the need for employers to have a consistent and easily understood policy regarding such altercations. The authors describe arbitration decisions regarding infighting and conclude that adoption of the just cause standard by employers will confuse and possibly antagonize employees by causing employers to treat fighting employees differently depending on whether they were the aggressor or victim, whether they were provoked into action, or whether they responded only in self-defense.

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Lucero, Margaret A., and Robert E. Allen.** "The Arbitration of Cases Involving Aggression Against Supervisors." Dispute Resolution Journal; February 1998; 53(1): pp. 57(7).

Article discusses the increasing phenomenon of aggression against supervisors in the workplace and the impact arbitrators have on



management's disciplinary proceedings. Authors provide empirical evidence as well as case studies that show that arbitrators either reduce management's disciplinary proceedings or rescind the penalties altogether. Authors propose that arbitrators rely on management having just cause for disciplining an employee for an act of workplace aggression. When arbitrators fail to find just cause, penalties are reduced or rescinded.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{93} SUBJ MATTER: LABOR-GENERAL

**Lynd, Patrick A.** "Recent Developments Regarding Mandatory Arbitration of Statutory Employment Disputes." Oregon Law Review; Spring 1998; 77: pp. 287-307.

Reflecting upon the impact of the *Gilmer v. Interstate Johnson Lane Corp.*, this article analyzes the use of mandatory arbitration clauses in employment contracts. Author argues that such clauses infringe upon certain constitutional rights and protections of the employee, whether or not they are included in a collective bargaining agreement. Author concludes that these concerns need to be balanced with employers' tendency to favor arbitration because of cost-effectiveness in order for arbitration to be equally beneficial.

{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Maar, Carl.** "Mandatory Mediation in Child Protection Cases." Canadian Lawyer; June 1998; 22(2): pp. 32-34.

Article discusses judge-presided mandatory mediation hearings in child protection cases, as implemented in British Columbia. Author examines the key developments which led to implementation of mandatory mediation, the format of the mediation sessions, and the positive impact mediation has had in decreasing litigation in this locale.

{21} MED: RELATED PROCESSES-GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

**Mabry, Cynthia R.** "African Americans "Are Not Carbon Copies" of White Americans—The Role of African American Culture in Mediation of Family Disputes." Ohio State Journal on Dispute Resolution; 1998; 13(2): pp. 405-460.

Author provides an in depth treatment of differences in cultural and family values held by members of different races, and argues that divorce mediators should be cognizant of these differences in order to encourage

the full participation of, and reach results more appropriate to, the individual parties involved in the conflict. Noting that persons of different races may respond to ADR schemes differently, the author encourages the use of cultural sensitivity training in order to help mediators avoid verbal and nonverbal miscues that may taint the mediation process.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

{21} MED: RELATED PROCESSES-GENERAL

**Maniruzzman, A. F. M.** "State Contracts and Arbitral Choice-of-Law Process and Techniques: A Critical Appraisal." Journal of International Arbitration; September 1998; 15(3): pp. 65-92.

Article addresses the problem of choice-of-law as determined by arbitrators. Author notes that parties often neglect to provide for choice-of-law clauses in their agreements. Accordingly, the arbitrator must determine the applicable substantive law. The author notes that arbitrators take many different, often ad hoc, approaches to determining which law shall govern the dispute. These approaches are examined. The author concludes that a trend towards delocalization of arbitration has emerged.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Marcucci, Michele.** "Freeing ADR." California Lawyer; February 1998; 18(2): pp. 29(7).

Article outlines one attorney's attempts to eliminate mandatory arbitration agreements as a condition of employment. Author provides a brief overview of the history of mandatory arbitration agreements in the past 10 years. Author notes that the most recent trend in this area is against the use of mandatory arbitration.

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Marks, Keith.** "From Conciliation and Arbitration to Workplace Relations 1988-1998." Law Institute Journal; June 1998; 72: pp. 40-43.

Article discusses the prevention and settlement of industrial disputes. Author traces the major changes of the Industrial Relations Act of 1988 to the present Workplace Relations Act of 1996. The comparison focuses on the trend to move away from centralized industrial regulation to a system that emphasizes collective bargaining.

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Marksteiner, Peter.** "How Confidential Are Federal Sector Employment-Related Dispute Mediations?" Ohio State Journal on Dispute Resolution;

Fall 1998; 14(1): pp. 89-155.

Article discusses the importance of confidentiality in resolving disputes through mediation in light of the Administrative Dispute Resolution Act (ADRA). The author analyzes the potential conflict between the ADRA and other federal labor statutes that grant employees the right to have union representation throughout the grievance process. The author expresses his concern that allowing union representatives to be present during mediation adversely effects confidentiality. The author offers several alternatives to minimize or alleviate potential conflict.

{132} CONFIDENTIALITY

{21} MED: RELATED PROCESSES-GENERAL

**Marlin, Beth.** "Alternative Dispute Resolution." Canadian Lawyer; November/December 1998; 22: pp. 39-46.

Article discusses the spread of mandatory ADR proceedings in Canada and how non-lawyers and judges are getting involved in learning new mediation skills. Author explains the details of the mandatory ADR proceedings including the qualifications of the mediators. The author also reviews the use of ADR in criminal and international proceedings throughout Canada.

{74} SUBJ MATTER: GENERAL

**Martell, Patrick J. and Steven M. Bauer.** "Dispute Resolution Agreements for High-Technology Companies." Corporate Counsel's Quarterly; October 1998; 14(4): pp. 124-134.

Article contains sample dispute resolution agreements for high-technology companies. Authors include a sample agreement for dispute resolution protocol for appropriation of information relating to software technology. Authors also provide a sample neutral expert's agreement.

{105} SUBJ MATTER: SCIENCE, COMPUTERS & TECHNOLOGY

**Martin, Craig.** "Unequal Shadows: Negotiation Theory and Spousal Support Under Canadian Divorce Law." University of Toronto Faculty of Law Review; Winter 1998; 56(1): pp. 135-159.

Article addresses the adverse effects that negotiated divorce settlement agreements have on women in Canada. Article stipulates that less than five percent of divorces are handled through the court system, while the rest are dealt with by negotiated agreements. Article contends that, due to the provisions of the Divorce Act of 1985, women unfairly receive less spousal support in negotiated settlements than they would have otherwise received through the court system. Author believes that this occurs primarily

because women are typically in the position of claimants in divorce negotiations, and due to the structure of the law, support claimants are usually disadvantaged in negotiations. Author believes that this anomaly can be remedied by a restructuring of the current support provisions of the law.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Matthews, Roderick B.** "ADR for Managed Health Care Disputes." Human Rights; Fall 1998; 25(4): pp. 21-22.

Author states that health care disputes concerning limitations or denials of treatments are a major issue facing both managed care providers and the public. Author asserts that ADR should be implemented as an alternative to litigation over such disputes, because it provides a more cost effective, faster, confidential, and non-precedent setting forum for resolving disputes. Author also declares that such an alternative will decrease public skepticism and provide a consumer-friendly means of resolving disputes.

{89} SUBJ MATTER: HOSPITALS

**Max, Rodney A., et al.** "Rules on the Alabama State Bar Resolution of Fee Disputes." Alabama Lawyer; July 1998; 59(5): pp. 251-254.

Article discusses the Alabama Bar Rules on the Resolution of Fee Disputes and the Committee on Fee Dispute Resolution. Issues such as jurisdiction of the committee, confidentiality, and mediation, are discussed. The article provides a general recitation and review of the rules.

{144} LEGISLATION

**Max, Rodney A.** "Mediation Comes of Age in Alabama." The Alabama Lawyer; July 1998; 59(1): pp. 239-243.

Article outlines the development of the concept of mediation in Alabama, which was first codified into the rules of court, statute, and the code of ethics in 1996. Article provides some of the relevant code provisions and explains the mediation process briefly, as enacted in the rules. Author commends the bar and bench for establishing these rules and guidelines.

{21} MED: RELATED PROCESSES-GENERAL

{144} LEGISLATION

**McAvoy, Ken.** "Why Arbitrate?" New Law Journal; February 1998; 148: pp. 168-170.

Article provides a brief description of the advantages of arbitration over

litigation. The discussion is in the context of the United Kingdom's legal system. The author focuses on four of arbitration's advantages over litigation: privacy, flexibility, simplicity, and cost.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**McCubbins, Tipton F.** "Protecting the Rights of Investors in the International Arena: A Case for Arbitration." American Journal of Trial Advocacy; Spring 1998; 21(3): pp. 523-545.

Article analyzes *Panama Processes, S.A. v. Cities Service Co.*, 796 P.2d 276, and uses it as an illustration of legal problems that may arise for investors in international business. The author advises investors to avoid losses by understanding the basic principles of judicial enforcement of international agreements and other options for enforcement of those agreements. One such option is to opt for an arbitrator rather than rely on a forum and law selection clause. The author contends that the arbitration alternative will ensure that foreign courts do not use unknown laws and unanticipated rules. Instead, under arbitration, the parties will receive treatment in the forum and under the laws of their choice.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{92} SUBJ MATTER: INT'L

**McDavid, Burke.** "Arbitration Alternatives with a Russian Party." International Lawyer; Spring 1998; 32(1): pp. 119-152.

Author provides suggestions to parties to a Russian contract when deciding what forum to choose when drafting an arbitration clause for submitting their dispute to arbitration. Article discusses the new system of Russian Arbitrazh as an alternate forum for the resolution of international business disputes. Author then analyzes the three main international arbitration alternatives.

{92} SUBJ MATTER: INT'L

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**McEwen, Craig A.** "Managing Corporate Disputing: Overcoming Barriers to the Effective Use of Mediation for Reducing the Cost and Time of Litigation." Ohio State Journal on Dispute Resolution; Fall 1998; 14(1): pp. 1-27.

Article analyzes the controversy between defenders of mediation and a highly publicized study by the Rand Corporation which found that there was little evidence that time to disposition or lawyer work hours were significantly reduced by mediation or neutral evaluation programs. The

author argues that both sides of the debate are focusing on the wrong issue because lawyers and parties have a significant impact on the successfulness of mediation. Accordingly, the author asserts that before asking whether or not mediation works, commentators must "examine how and why parties and lawyers 'work' mediation in varying ways."

{81} SUBJ MATTER: CORPORATE

{21} MED: RELATED PROCESSES-GENERAL

**McEwen, Craig A. and Laura Williams.** "Legal Policy and Access to Justice Through Courts and Mediation." Ohio State Journal on Dispute Resolution; Summer 1998; 13(3): pp. 865883.

Article addresses the issue of access to justice through mediation. Authors suggest that legal policies must be attentive to two meanings of access to justice when considering mediation. First, if access to justice means availability of procedures to make a legal determination, then legal policies concerning mediation must not increase pressure to settle. Second, if access to justice means availability of mediation to all parties, then mediation policy must provide funding for mediation services.

{21} MED: RELATED PROCESSES-GENERAL

**McGuire, James E.** "Practical Tips for Using Risk Analysis in Mediation." Dispute Resolution Journal; May 1998; 53(2): pp. 15-21.

Article discusses the pros and cons of risk analysis as a negotiation tool. Author uses a case example to illustrate how risk analysis provides a structured approach to evaluating parties' perceptions of a fair settlement range. Author cautions that risk analysis, like other ADR tools, is not always needed and should not be used just because it is available.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**McLeod, Tyler.** "Are the Foxes Guarding the Chickens? Arbitration Agreement in Employee Handbook Subjects Title VII Claim to Arbitration." University of Kansas Law Review; April 1998; : pp. 631-658.

Article examines the Eighth Circuit's decision in *Patterson v. Tenet Healthcare, Inc.* in which the court required an employee who had signed an arbitration agreement to submit her Title VII employment discrimination claim to arbitration. Author argues that such a requirement improperly favors arbitration over the protection of statutory rights and fairness. Author further asserts that arbitration agreements should only be enforceable where the employee is specifically informed of what claims and

rights are being waived.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**McRae, Brad** (1998). Negotiating and Influencing Skills: The Art of Creating and Claiming Value. Thousand Oaks, California, SAGE Publications.

Book offers a practical guide to negotiating in a variety of situations. Author focuses on role of negotiator and how the negotiator can develop effective negotiating skills. Topics examined include Best Alternative to a Negotiated Settlement (BATNA), assessing one's negotiating skill and ways to deal with difficult people in negotiations.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Meltzer, D. Leah**. "The Federal Workplace Ombuds." Ohio State Journal on Dispute Resolution; 1998; 13(2): pp. 548-610.

Author traces the development and effectiveness of federal workplace ombuds in resolving employment related disputes in federal agencies. Article examines differences in the structure and role of the ombuds office in different federal agencies and contrasts the role of these ombuds with the role of ombuds in the private sector. The author concludes that results reached by ombuds reviewed in the article indicate that ombuds are a cost-effective and beneficial tool for government agencies.

{145} OMBUDSPERSON

{87} SUBJ MATTER: GOV'T

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Menkel-Meadow, Carrie**. "Taking the Mass out of Mass Torts: Reflections of a Dalkon Shield Arbitrator on Alternative Dispute Resolution, Judging, Neutrality, Gender and Process." Loyola of Los Angeles Law Review; January 1998; 31(2): pp. 513-549.

Article provides an overview of how ADR affected the mass injury suits that followed the use of an Intrauterine Device ("IUD"), the Dalkon Shield. Author contends that ADR, when used properly, can make mass injury suits more personal and individualized, which generates a stronger belief that the process was fair. Author believes that women arbitrators are more considerate of the needs of the female claimants. Author questions whether or not literature written on judicial neutrality, decision-making, and disqualification fully takes into account the differences between ADR and formal adjudication.

## {110} SUBJ MATTER: OTHER TORTS

**Minick, Bill.** "Ensuring that the Programs Succeed: Employment ADR How To's." Dispute Resolution Journal; August 1998; 53(3): pp. 58-61.

Article outlines ten steps needed to implement an effective dispute resolution mechanism. Author contends that there is an increasing need for such a mechanism as employers grow more concerned with reports of disgruntled workers receiving multi-million dollar judgements. Author concludes that through the steps that are listed, both employers and employees can benefit from a thoughtful and deliberately designed dispute resolution program employed at the workplace.

## {96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Mitchell, Rosanne T.** "Resolving Domain Name-Trademark Disputes: A New System of Alternative Dispute Resolution is Needed in Cyberspace." Ohio State Journal on Dispute Resolution; 1998; 14(1): pp. 157-192.

Article discusses the use of alternative dispute resolution in effectively resolving disputes arising between corporations and/or organizations over the use of specific domain names. The author begins by analyzing the International Ad Hoc Committee's dispute resolution proposal for resolving such domain name disputes. The author concludes that despite some weaknesses, the International Ad Hoc Committee's proposal is well suited to deal with the spectrum of jurisdictional and intellectual property disputes likely to arise with the increasing expansion of the Internet.

## {105} SUBJ MATTER: SCIENCE, COMPUTERS &amp; TECHNOLOGY

**Moberly, Michael D.** "What the Heck's Going on Here? Some Unexpected Consequences of Employee Handbook Acknowledgments." Idaho Law Review; Spring 1998; 34(2): pp. 283-308.

Article advises employers on drafting acknowledgment forms for employee handbooks in order to bind employees to use alternative resolution methods to resolve disputes. Through the examination of federal case law, the author specifically addresses the problem of acknowledgment forms when non-union language has been used in the handbook and how the acknowledgment form may be a violation of the National Labor Relations Act if such language is enumerated in the handbook. The author advocates structuring an acknowledgment form that specifically states that the employee is agreeing to the arbitration provisions contained in the handbook, excluding any non-union policies.

## {96} SUBJ MATTER: EMPLOYMENT (NON-UNION)



**Moller, Sid L.** "Birth of Contracts: Arbitration in the Non-union Workplace." South Carolina Law Review; Fall 1998; 50: pp. 183.

Article discusses the use of arbitration in solving employer-employee disputes. The author asserts that the expanding use of arbitration by employers is a result of the law and legal problems invading the work place. Author analyzes the traditional non-union employment relationship and the effect of recent legal developments on that relationship. The author explains how recent developments in the law have allowed the expansion of arbitration into the non-union workplace. Article concludes that the continued expansion of arbitration will eventually lead to "minimum standards" for non-union employees.

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Moore, Susan A. and Robert G. Lee.** "Creating Value: A Hidden Benefit of Environmental Resolution in Australia and the United States." Australian Dispute Resolution Journal; 1998; 9: pp. 11-21.

Article provides examples of creating value from case studies of United States and Australian environmental disputes. Authors define "value" as making an outcome more valuable. Authors claim value is created when parties realize shared interests and engage in joint problem solving. Authors found that key methods of creating value (i.e. working with differences and similarities and fostering good relationships) were important to the outcome of the dispute resolution process.

{84} SUBJ MATTER: ENVIRONMENT

**Morrow, Joshua J.** "*Austin v. Ownens-Brockway Glass Containter, Inc.*: Shattering Discriminated Union Members' Choice of Judicial Forum." The Labor Lawyer; 1998; 14(1): pp. 143-160.

After tracing the evolution of arbitration and statutory rights of employees in *Gardner-Denver*, *Gilmer* and lower-court cases that followed, the author analyzes *Austin v. Ownens-Brockway Glass Containter, Inc.*, and the legislative history of the ADA and Civil Rights Act of 1991. Author notes that, following the *Gilmer* decision, the *Austin* court held that an arbitration agreement in the collective bargaining agreement precludes an employee from pursuing their statutory right in federal court. Disagreeing with *Austin*, the author states that the *Austin* court failed to follow *Gardner-Denver*. The court in *Austin* should have, the author states, found that the plaintiff had a separate cause of action independent of the grievance claim.

The author discourages courts from following *Austin*.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Motiwal, O.P.** "Alternative Dispute Resolution in India." Journal of International Arbitration; June 1998; 15(2): pp. 117-127.

Article provides an introduction to many ADR methods with an emphasis on mediation. The article includes a discussion of the multi-door courthouse system. India's adoption of ADR techniques and other aspects of ADR in India are discussed.

{74} SUBJ MATTER: GENERAL

**Motley, John-Paul.** "Compulsory Arbitration Agreements in Employment Contracts from *Gardner-Denver* to *Austin*: The Legal Uncertainty and Why Employers Should Choose Not to Use Preemployment Arbitration Agreements." Vanderbilt Law Review; April 1998; 51(3): pp. 687-720.

Author argues that it was a poor decision for the courts to develop a per se rule that arbitration must be enforced unless Congress dictates otherwise. Author develops policy arguments against enforced arbitration, and argues that employers should not make compulsory arbitration agreements with employers.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)

**Mott, Cassandra G.** "Macy's Miracle on 34th Street: Employing Mediation to Develop the Reorganization Plan in a Mega-Chapter 11 Case." Ohio State Journal on Dispute Resolution; Fall 1998; 14(1): pp. 193-213.

Article discusses the use of mediation in resolving disputes encountered in a Chapter 11 bankruptcy proceeding. Author recounts how the Bankruptcy Court for the Southern District of New York successfully used mediation in the highly publicized Macy's chapter 11 proceeding. Author discusses the scope of court authority to assign cases to mediation and the controversy surrounding mediation in the bankruptcy world. Author concludes that the successful use of mediation in the Macy's case will likely result in an increase in the use of mediation as a means for resolving disputes that arise during a Chapter 11 bankruptcy proceeding.

{21} MED: RELATED PROCESSES-GENERAL

**Muller, Eva.** "Fast-Track Arbitration Meeting the Demands of the Next

Millennium." Journal of International Arbitration; September 1998; 15(3): pp. 5-18.

Article discusses and compares different fast-track arbitral procedures. Author critiques various methods of arbitration and provides some insight for the future demands of the arbitration field.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Musolino, Annette.** "Gender Expectations: Impact on Negotiators." Australian Dispute Resolution Journal; May 1998; 9(2): pp. 103-105.

Article discusses notion that gender does not have a significant impact on the way individuals negotiate. Author argues that the real significance of gender on negotiation is in the importance that negotiation opponents attach to it and the effect this has on individuals' perception of their opponents. Author concludes that negotiators will accuse opponents of acting unreasonably if their opponents fail to follow gender expectations.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Najita, Joyce M., ed.** (1998). Arbitration 1997 the Next Fifty Years. Washington D.C., Bureau of National Affairs Books.

Book is a collection of works from the 1997 Annual Meeting of the National Academy of Arbitrators. Various authors discuss arbitration and alternative dispute resolution.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Neubauer, Mark A., Pamela Beckham, Gary A. Wexler and Daniel W. Hildebrand.** "Finishing Touches; Lawyers May Be in the Business of Resolving Disputes, But Sometimes It Seems Very Few Cases Actually Come to an End. There Are Ways, However, to Deal Effectively with Issues that Tend to Keep Files Open." ABA Journal; December 1998; 84: pp. 60-61.

Authors discuss the "Case That Won't Go Away," including factors of why it is difficult to let go of cases. Authors include such factors as malpractice worries, fees, and high stakes. Article urges lawyers to close out cases instead of letting these factors draw them out.

{123} SETTLEMENT: PRESSURES TO SETTLE

**Nissen, William J.** "Courts Face Conflicting Policies in Enforcing Arbitration of Antitrust Claims." The Preventive Law Reporter; Spring 1998; 17(1): pp. 29-30.

Article discusses conflicting policies involved in the arbitration of antitrust

claims. Article examines the history of case law on the subject. The author suggests that arbitration clauses for antitrust claims should call for neutral arbitrators who have no interest in the dispute; giving the arbitration clause a greater chance of being enforced in court.

{75} SUBJ MATTER: ANTITRUST

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Noble, Cinnie** (1998). Mediation Advocacy: Effective Client Representation in Mediation Procedures. Toronto, Emond Montgomery Publications Limited.

Book provides a general overview of the mediation process and the lawyer's role in this process. Book includes a discussion of: the importance of informing clients of the mediation option and how the process works, techniques to be used by mediators, and the value of case and client assessment to determine appropriateness of mediation. Book examines how to select a mediator, including a checklist of suggested questions that may be used to determine if a mediator is qualified. Author also discusses client and lawyer preparation for mediation, and ethical issues raised by use of mediation. Book is clearly geared toward Canadian mediation and uses Canadian jurisdictions in its analysis.

{21} MED: RELATED PROCESSES-GENERAL

**Nolan, Dennis R.** (1998). Labor and Employment Arbitration in a Nutshell. St. Paul, Minnesota, West.

Author provides an overview of labor and employment arbitration including definitions of the relevant terms used in the field. Author analyses such issues as: statutory versus the common law; the relationship between employers, employees, the NLRB, and the courts; and contractual interpretations by arbitrators.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{93} SUBJ MATTER: LABOR-GENERAL

**Nolan, Dennis.** "Labor and Employment Arbitration: What's Justice Got To Do With It?" Dispute Resolution Journal; November 1998; 53(4): pp. 40-48.

Author argues that a well-designed employment arbitration system for statutory disputes can provide the same degree of justice to employers and employees as labor arbitration has provided to parties in contractual disputes. Author suggests that this arbitration system should include four elements: a neutral decision-maker, fair procedures, full remedies, and

allocation of costs.

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Nolan-Haley, Jacqueline M.** "Lawyer, Clients, and Mediation." Notre Dame Law Review; July 1998; 73: pp. 1369-1390.

Article examines Professor MaryAnn Glendon's call for the addition of civility in the practice of law and more deliberation between lawyer and client. Author explores how Glendon's principles are applicable to the practice of mediation. Author suggests the use of a client-counseling mediation approach that is based on a deliberative process. Author encourages attorney-mediators and clients to debate and persuade each other during the course of a mediation.

{151} ROLE OF LAWYERS

{21} MED: RELATED PROCESSES-GENERAL

**Norman, Fera M.** "Must They be Required to Testify? Arbitrators in Court." Dispute Resolution Journal; May 1998; 53(2): pp. 68-72.

Article discusses whether, if ever, it is appropriate to require an arbitrator to give testimony after an appeal or review commences in the matter that is the subject of judicial supervision. Article analyzes a problematic case where the arbitrator made a significant error and the arbitrator's testimony concerning the matter was later taken. Author contends that an arbitrator should not be called as a witness in an appeal or review of her own arbitration decision.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**O'Leary, Dennis P.** "The First Circuit Provides a Return For Investors and Allows Them Their Day in Arbitration." New England Law Review; Winter 1998; 32(2): pp. 553-613.

Article discusses the First Circuit's decision in *Paine Webber Inc. v. Elahi*. *Paine Webber* deals with an investor's duty to bring a claim against the investment firm to an arbitrator within six years of the cause of action. At issue in the case was whether the arbitrator should decide if the six years has expired or if a court should make this determination. The court held that an arbitrator should make this decision. The author agrees with this holding. Article provides a discussion of what the other circuit courts have held on this issue.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Ohio CLE Institute** (1998). The Appropriate Use of ADR in Your Practice. Columbus, Ohio, Ohio CLE Institute.

Outline of information presented at a Continuing Legal Education seminar of the same name. Book includes information spanning the use of ADR in corporate law, employment and labor law, government agencies, the court system and settlement week, and the fact scenario given for a practical exercise comparing arbitration and mediation. Some rules of court and generic forms are provided.

{74} SUBJ MATTER: GENERAL

**Okekeifere, Andrew I.** "The Parties Rights Against a Dilatory or Unskilled Arbitrator; Possible New Approaches." Journal of International Arbitration; June 1998; 15(2): pp. 129-144.

Article introduces the reader to the dilatory arbitrator and the arbitral process. Author discusses what effect an unskilled arbitrator has on an arbitration and current remedies to the problem of unskilled arbitrators. Author concludes by proposing new approaches to deal with arbitrator incompetence.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Orkin, Neal and Tara Jurasek.** "Arbitrating Employee Intellectual Property Disputes." Labor Law Journal; May 1998; 49(5): pp. 1024-1028.

Article provides an analysis of labor arbitration in the context of intellectual property, copyright, patent, and employment and labor law. Article analyzes objections to labor and employment contracts and how arbitration can be used to resolve such issues. Author contends that an arbitrator must be familiar with established common law, applicable federal statutes and their judicial interpretation, and employment setting in order to effectively arbitrate employee intellectual property disputes.

{93} SUBJ MATTER: LABOR-GENERAL

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Osler, Brian.** "Mediating Between Banks and Small Business." Dispute Resolution Journal; May 1998; 53(2): pp. 30-33.

Article considers conflicts that arise between banks and small businesses. Small businesses often do not have the assets necessary to secure business loans and they lack effective communication with banks. Author examines the Canadian Bankers Association Model for the mediation of disputes between banks and small businesses. Author discusses obstacles that need to be overcome to ensure that this Model is a successful means for

resolving disputes.

{76} SUBJ MATTER: COMMERCIAL

{21} MED: RELATED PROCESSES-GENERAL

**Ostrowski, Stephen T. and Yuval Shany.** "*Chromalloy*: United States Law and the International Arbitration at the Crossroads." New York University Law Review; November 1998; 73(5): pp. 1650-1693.

Article discusses the case *Matter of Chromalloy Aeroservices* (Arab Republic), 939 F.Supp. 907 (D.D.C. 1996) where the district court upheld the validity of a foreign arbitral award. Authors offer a critical analysis of *Chromalloy* focusing on potential problems with the court's reliance on Article VII of the New York Convention. Authors propose guidelines for handling such conflicts in the future.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Paquet, Renaud and Isabelle Roy.** "Why Do People Get Involved In Local Union Offices?" Journal of Collective Negotiations in the Public Sector; Winter 1998; 27(1): pp. 63-77.

Article provides an overview of the authors' study of the psychological factors that affect union participation. Authors conclude that these factors affect the union's strength in negotiation with management.

{93} SUBJ MATTER: LABOR-GENERAL

**Park, William M.** "Bridging the Gap in Forum Selection: Harmonizing Arbitration and Court Selection." Transnational Law and Contemporary Problems; Spring 1998; 8(1): pp. 19-56.

Article examines legal frameworks for enforcing choice of court clauses in arbitration agreements under the Model International Court Selection Act. Author analyzes some possible objections and potential jurisdictional conflicts that may result from applying such a framework. The article concludes that the U.S. lags behind many of its trading partner countries in the enforceability of agreements resolving international commercial disputes in contractually designated courts.

{92} SUBJ MATTER: INT'L

{76} SUBJ MATTER: COMMERCIAL

**Pedone, Nicole.** "Lawyer's Duty to Discuss Alternative Dispute Resolution in the Best Interest of Children." Family and Conciliation Courts Review; January 1998; 36(1): pp. 65-89.

Author argues that the Model Rules of Professional Responsibility should

be expanded to create an ethical duty on the part of the matrimonial attorney to inform his clients of the possibility to resolve disputes, especially those involving children, through use of an alternative dispute resolution mechanism. Author suggests that informed consent rules that require doctors to disclose all possible methods of treatment to patients are appropriate models upon which to construct such rules. Like doctors, the author argues, lawyers should be required to place every possible options in front of their clients. The author concedes that not every case will lend itself to resolution by ADR techniques, but argues that many divorce proceedings are well suited to mediation or arbitration. Moreover, ADR wreaks far less emotional havoc on the child than does divorce litigation, gives rise to stable agreements between the divorcing parents, and breeds greater respect for the individual practitioner as well as the legal community in general.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

**Perlman, Irving.** "The Transfer of Unit Work: The Duty to Bargain in New York State Public Agencies." Journal of Collective Bargaining; Spring 1998; 27: pp. 107-119.

Article examines whether New York State's Public Employer's decision to outsource work to a subcontractor is a mandatory subject of negotiation. Author analyzes several decisions by the New York Public Employment Relations Board with regard to the issue. Author concludes that close monitoring of the developing law is essential in deciding when the decision to transfer work is subject to negotiation because of the escalating interest in the area.

{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)

**Perry, Mike.** "Beyond Dispute: A Comment on ADR and Human-Rights Adjudication." Dispute Resolution Journal; May 1998; 53(2): pp. 50-57.

Article analyzes alternative forms of dispute resolution in the context of resolving human rights issues. Article discusses various forms of mediation that can and have been used in human rights disputes. Author describes how justice can be given a priority in ADR and how the issue of imbalances of power between the parties can be resolved by ADR. Author contends that ADR can be used effectively in human rights adjudication.

{74} SUBJ MATTER: GENERAL

{147} POWER IMBALANCE

**Peterson, Donald.** "Arbitrating Cases of Employee Misconduct in Work



Stoppages." Dispute Resolution Journal; February 1998; 53(1): pp. 44(9). Author reviews arbitration results of cases involving strike misconduct, slowdowns, and wildcat strikes. Author explains the standard of review used by the arbitrators in each of these three employee misconduct situations. For strike misconduct cases, author contends that the employer has to show just cause for disciplining the employee for misconduct. In slowdown and wildcat strike instances, the employer has the burden of proving that a slowdown or wildcat strike in fact occurred. Article provides case study examples of arbitrators who have settled strike misconduct, slowdown, and wildcat disputes.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{93} SUBJ MATTER: LABOR-GENERAL

Phelan, Gary. "Resolving ADA Cases Through Mediation." Trial; December 1998; 56(1): pp. 56-59.

Article advocates the use of mediation for "reasonable accommodation" cases filed under the Americans with Disabilities Act (ADA). Author contends that mediation in this area of law provides a unique opportunity to negotiate a mutually beneficial solution in the workplace. Author suggests ten primary reasons to consider mediation in ADA cases and also includes negotiation guidelines to assist attorneys representing employees seeking these accommodations.

{21} MED: RELATED PROCESSES-GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

Picker, Bennett G. (1998). Mediation Practice Guide: A Handbook for Resolving Business Disputes. Bethesda Maryland, Pike & Fischer, Inc.

Book examines general mediation topics. Author discusses different types of mediation, types of disputes most favorable to mediation, why mediation may or may not be effective, the stages of the mediation process, the role of the mediator, selection of a mediator, and the preparation necessary for mediation. Also analyzed are case examples of mediations, corporate and law firm ADR strategies, and a listing of criteria for determining case suitability of ADR.

{21} MED: RELATED PROCESSES-GENERAL

Plant, David W. "Mediation in International Commercial Arbitration: Some Practical Aspects." ILSA Journal of International & Comparative Law; Spring 1998; 4(2): pp. 329-336.

Article sets forth some circumstances under which arbitrators should be

encouraged to participate in settlement discussions. Author argues that providing facility for settlement talks throughout the arbitration will cause settlements to occur earlier. Article sets forth the ground rules that parties might use if the arbitrator is to be part of settlement discussions.

{74} SUBJ MATTER: GENERAL

**Podoll, Richard B.** "Limiting Litigation Expense and Exposure Through Arbitration." Preventive Law Reporter; 1998; 17(3): pp. 3-5.

Author discusses how arbitration has become a popular alternative to litigation as a vehicle to resolve commercial disputes to avoid the pitfalls inherent in the litigation process. Arbitration provides a means to achieve a quick resolution of disputes at a reduced cost. Article examines the benefits of arbitration, state and federal laws governing arbitration, and things to consider when drafting an arbitration agreement.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Poser, Norman S.** "Judicial Review of Arbitration Awards: Manifest Disregard of the Law." Brooklyn Law Review; Summer 1998; 64(2): pp. 471-518.

Article discusses judicial review of arbitration awards in the context of two Second Circuit age discrimination claims. Author examines the current standard of review for arbitration--manifest disregard for the law--and argues that the standard is inadequate to protect the interests of litigants. Author proposes a standard of review that would require a court to modify or vacate an award if the award egregiously departs from established legal principles, even if the arbitration is ignorant of the correct law.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Raber, Nancy K.** "Dispute Resolution in Olympic Sport: The Court of Arbitration for Sport." Seton Hall Journal of Sport Law; Winter 1998; 8(1): pp. 75-97.

Article examines whether the Court of Arbitration for Sport (CAS) provides an adequate alternative to litigation for resolving disputes within the Olympic community. Author discusses the structure and operating principles of the CAS and the advantages and limitations of using it for dispute resolution in Olympic sports. Author suggests actions that may be taken to improve CAS.

{107} SUBJ MATTER: SPORTS AND ENTERTAINMENT

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Rack, Robert W.** "Approaching Appellate Mediation in the Sixth Circuit Court of Appeals." Kentucky Bench and Bar; November 1998; 62(5): pp. 24-25.

Article briefly outlines the mediation program of the Sixth Circuit Court of Appeals. The program was created in response to the rising number of civil appeals. The author argues that this mediation program has been successful by pointing out the number of cases that are resolved by the program. A key feature of the Sixth Circuit's program is strict confidentiality, which allows the parties to speak candidly about their needs and problems.

{133} COURT REFORM

{21} MED: RELATED PROCESSES-GENERAL

**Raghavan, Vikram.** "Heightened Judicial Review of Arbitral Awards Perspectives From the UNCITRAL Model Law and the English Arbitration Act of 1996 on Some US Developments." Journal of International Arbitration; September 1998; 15(3): pp. 103-134.

Article discusses judicial intervention in the arbitral process. Author discusses the expansion of judicial review in some recent U.S. Supreme Court cases and examines the present status of judicial review in light of the UNCITRAL Model Law and the English Arbitration Act of 1996. Author does not support an increase in judicial review because it limits the purpose of arbitration proceedings.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Rahnama-Moghadam, Mashaalah, David A. Dilts and Hedayeh Samavati.** "The Clubs of London & Paris." Dispute Resolution Journal; November 1998; 53(4): pp. 71-74.

Article examines the dispute resolution procedures that have proved successful in international financial disputes—the Club of Paris and the Club of London. These case studies provide insight into motivating peaceful settlements in international disputes. Authors specifically focus on the nature of enforcement difficulties and offer direct economic incentives as a possible solution.

{92} SUBJ MATTER: INT'L

**Ravin, Richard L.** "Y2K & ADR: Get Ready for Midnight." Dispute Resolution Journal; November 1998; 53(4): pp. 8-15.

Article presents an overview of the "Year 2000 Bug," its cause and its potential effects on commercial relations. The author contends that ADR will be useful in dealing with an expected increase in contract and tort

lawsuits related to the Y2K problem. Article also briefly describes a mediation-arbitration program that is being drafted by the American Arbitration Association's Technology Committee to deal with the Y2K problem.

{105} SUBJ MATTER: SCEINCE, COMPUTERS & TECHNOLOGY

**Redfern, Michael.** "The Continuance Method of Mediation." Australian Dispute Resolution Journal; November 1998; 9(4): pp. 293-345.

Article outlines an ongoing form of mediation with a more open-ended agenda for situations where the parties need to consider and assess their positions over a greater period of time. Author illustrates this approach through a case study involving a landlord/tenant dispute. The various advantages and disadvantages of a continuance method of mediation are discussed in the article.

{21} MED: RELATED PROCESSES-GENERAL

**Reed, John L. and Richard K. Hermann.** "An Alternative to the Not-Ready-for-the-Year-2000 Court System." Dispute Resolution Journal; November 1998; 53(4): pp. 16-18.

Article discusses the year 2000 computer problem, the litigation options, and how ADR can be of assistance in these disputes. Author advocates the use of ADR in resolving Y2K disputes instead of litigating these claims and overcrowding the courts. Author is concerned about the potential effects of litigating these disputes and urges businesses to at least consider ADR as an alternative.

{105} SUBJ MATTER: SCEINCE, COMPUTERS & TECHNOLOGY

**Reitman, Jonathan W.** "What Every Successful Bar Applicant Should Know About Alternative Dispute Resolution." The Bar Examiner; February 1998; 67(1): pp. 23-29.

Author argues that bar examiners need to examine prospective attorneys in the area of ADR. Author believes the following substantive areas should be on the bar exam: 1) ADR indicators and methodologies; 2) public policy questions which arise from use of ADR; and 3) the use of ADR in substantive areas of law. Author believes the bar exam is not testing "minimum competence" because concepts of ADR are excluded from the exam.

{74} SUBJ MATTER: GENERAL

**Reno, Janet and Bill Clinton.** "Reno to Lawyers: Consider ADR."

Dispute Resolution Journal; August 1998; 53(3): pp. 48-49.

Article contains a short excerpt from U.S. Attorney General Janet Reno's statement advocating the increased use of ADR. The statement, released on May 1st, 1998, strongly supports the use of ADR in all aspects of law practice. Also included is a memorandum from President Bill Clinton that likewise supports the use of ADR.

{74} SUBJ MATTER: GENERAL

**Reuben, Richard C.** "Reforming ADR." California Lawyer; February 1998; 18: pp. 30-32.

Article addresses a problematic issue stemming from the increasing reliance on ADR. Author is concerned that constitutional protections are lacking in both court-related ADR and in contractual ADR between private parties. Author suggests that recognizing due process rights in ADR will acknowledge that ADR does not exist separately from the public justice system.

{74} SUBJ MATTER: GENERAL

**Richards, Christopher.** "Disclosing Finances in Mediation." Family Law; May 1998; 28: pp. 278-279.

Article examines the problems of disclosing finances in divorce mediations. Author points to distrust of the divorcing parties, high emotional levels, and family dynamics as reasons why clients become uncooperative. Author contends distrust must be dissolved by openness and exploration of both family and needs.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

{21} MED: RELATED PROCESSES-GENERAL

**Richards, Christopher.** "Mediation as a Business." Family Law; November 1998; 28: pp. 966-968.

Article discusses how mediation is emerging as a very important mechanism in solving conflicts between separating couples in the United Kingdom. Article stresses that mediators should employ a flexible approach to mediation that takes into account the unique characteristics of each individual dispute, while preserving the basic principles of mediation. The author discusses the strength of the National Family Mediator services (non-profit mediator organizations) in the area of couple mediation, and calls for private mediators to recognize the need for mediators in this area.

{21} MED: RELATED PROCESSES-GENERAL

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

**Riskin, Leonard L. and James E. Westbrook** (1998). Dispute Resolution and Lawyers. St. Paul, West Publishing Company.

Textbook provides an instructive guide on how lawyers can use dispute resolution in practice. Book gives an overview of dispute prevention and resolution processes; covers interviewing and counseling processes; addresses negotiation, mediation, and arbitration; covers mixed processes; and discusses how to choose or build a dispute resolution process. Authors contend that a lawyer must be able to identify people's underlying motives or goals and promote legal rights and positions.

{151} ROLE OF LAWYERS

**Robinson, Peter.** "Contending with Wolves in Sheep's Clothing: a Cautiously Cooperative Approach to Mediation Advocacy." Baylor Law Review; Fall 1998; 50(4): pp. 963-984.

Article considers the various competitive and cooperative advocacy techniques available in mediation and addresses when the use of each may be appropriate for the client, and when their use may be advantageous or disadvantageous. Author recommends that mediation advocates should be "cautiously cooperative;" they should be willing to cooperate in order to enhance the likelihood of settlement, but, at the same time, they should be committed to countering the opponent's competitive behavior.

{21} MED: RELATED PROCESSES-GENERAL

**Rogers, Nancy H. and Craig A. McEwen.** "Employing the Law to Increase the Use of Mediation and to Encourage Direct and Early Negotiations." Ohio State Journal on Dispute Resolution; 1998; 13(3): pp. 831-864.

Article examines the effects a change in the law can have on the current status of mediation in the United States. Authors suggest ways to regulate mediation that will result in lawyers referring clients to mediation more frequently and will result in the promotion of early settlement by lawyers.

{21} MED: RELATED PROCESSES-GENERAL

{144} LEGISLATION

**Rosenberger, Paul.** "Note, Laissez-"Fair": An Argument for the Status Quo Ethical Constraints on Lawyers as Negotiators." Ohio State Journal on Dispute Resolution; 1998; 13(2): pp. 611-638.

Note addresses the debate over the need for more formal rules of attorney conduct when negotiating. Author discusses the principal arguments for and

against such rules, in addition to the relative merits of proposed rules, and concludes that current constraints on attorney conduct are sufficient.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL  
{151} ROLE OF LAWYERS

**Rosenstein, James A.** "Ten Obstacles to a Negotiated Agreement and How to Overcome Them." Practical Lawyer; October 1998; 44: pp. 47(18).

Article discusses potential obstacle to reaching an agreement through negotiation. Author generally categorizes the various obstacles an attorney faces during the negotiating process. Author analyses and suggests ways to handle the case of the missing party, the hidden agenda, the unstated assumption, inadequate analysis, inadequate disclosure, and the incredible position. The author also discusses how to handle or avert the case of trying to run before learning how to walk, biting off more than one can chew, the sloped playing field, and the need to save face. Article concludes with an Appendix that lists potential obstacles to agreement.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Rowe, Fran.** "Sovereignty and Respect." Australian Journal on Dispute Resolution; May 1998; 9(2): pp. 98-102.

Article describes traditional approaches to negotiations and the need for more modern attitudes to mediation. Author stresses the importance of respecting those who you do business with. Author suggests that negotiations are often hindered by stereotypes concerning gender and power.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL  
{147} POWER IMBALANCE

**Ruder, David S.** "Elements of a Fair and Efficient Securities Arbitration System." Arizona Law Review; Fall 1998; 40(3): pp. 1101-1109.

Article analyses the Securities Arbitration Reform Report, which was drafted by the Arbitration Policy Task Force of the National Association of Securities Dealers (NASD) for the NASD Board of Governors. Article describes a model for a fair and efficient securities arbitration system and reviews the suggestions for improvement to the NASD system drafted by the Task Force. Author contends that the parties to an arbitration proceeding seek a fair, relatively speedy and inexpensive means for resolving disputes. Author sets out two goals in the process of selecting arbitrators: (1) the selection of unbiased, competent, experienced arbitrators, and (2) an opportunity for parties to participate in the

arbitrator's selection of their case.

{106} SUBJ MATTER: SECURITIES

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Sabatino, Jack M.** "ADR as "Litigation Lite": Procedural and Evidentiary Norms Embedded Within Alternative Dispute Resolution." Emory Law Journal; Fall 1998; 47(4): pp. 1289-1349.

Article argues that forms of ADR represent the privatization of traditional government functions. The author believes that ADR and litigation are not as different as some may argue, and he focuses on procedural and evidentiary aspects of litigation that have been incorporated into ADR. The author argues that private ADR is beneficial, but that it is not capable of resolving every type of dispute. The author believes that litigation and ADR will be able to co-exist and benefit the public if traditional litigation incorporates some of the user-friendly aspects of ADR. In addition, the author asserts that the structure of ADR will be a product of societal demands, but cautions that ADR must continue to provide an adequate and fair process for all involved.

{74} SUBJ MATTER: GENERAL

**Sagartz, Andrew.** "Resolution of International Commercial Disputes: Surmounting Barriers of Culture Without Going to Court." Ohio State Journal on Dispute Resolution; 1998; 13(2): pp. 675-710.

Note argues that an increase in international business transactions has led to a rise in commercial disputes between parties from different national and cultural backgrounds thus necessitating need for ADR schemes that employ third party facilitators trained in the cultural norms of both parties. Author provides examples showing how easy it is for American businesses to stumble into a cultural misunderstanding unknowingly, and points out that other cultures often have more exposure to American cultural cues than Americans have with other cultures. Author argues that ADR schemes that provide for facilitators familiar with the cultural differences between the parties reach resolution more quickly, at lower cost, and have a better chance at saving the relationship between the parties than judicial alternatives.

{92} SUBJ MATTER: INT'L

{76} SUBJ MATTER: COMMERCIAL

**Salvatore, Paul and John F. Fullerton III.** "Arbitration of Discrimination Claims in the Union Setting: Revisiting the Tension Between Individual



Rights and Collective Representation." The Labor Lawyer; 1998; 14(1): pp. 129-141.

Article discusses the tension between collective and individual rights in contracting to arbitrate discrimination claims. The authors first provide an overview of *Gardner-Denver* and *Gilmer*. The authors then focus on the tension between individual and collective rights in the union context and whether an employee agrees to arbitrate statutory discrimination claims simply because her union has agreed. The courts are split on this issue. In addressing this split, the authors believe that the *Austin v. Ownens-Brockway Glass Containter, Inc* view that an employee does agree to arbitrate by virtue of his union agreeing to arbitrate, is the better decision.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)

**Sander, Frank E. A.** "Introduction (Symposium on Drafting a Uniform/Model Mediation Act)." Ohio State Journal on Dispute Resolution; 1998; 13(3): pp. 791-793.

Article provides introductory comments on the issue of how to go about drafting a uniform or model act on mediation. Author states that there are two approaches to this task. First, one may take a policy-based approach. Second, one may draw upon currently existing empirical data in drafting the act. Article provides an outline of the papers given at the Symposium on Drafting a Uniform/Model Mediation Act at the Ohio State University College of Law.

{21} MED: RELATED PROCESSES-GENERAL

{144} LEGISLATION

**Sawrie, David F.** "Equitable Estoppel and the Outer Boundaries of Federal Arbitration Law: The Alabama Supreme Court's Retrenchment of an expansive Federal Policy Favoring Arbitration." Vanderbilt Law Review; April 1998; 51(3): pp. 721-758.

Article describes the development of law under the Federal Arbitration Act and discusses the Alabama Supreme Court's view toward arbitration. Author argues that the narrower Alabama approach that excludes nonsignatories to arbitration agreements is the more attractive approach.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Schneider, Andrea K.** "Democracy and Dispute Resolution: Individual Rights in International Trade Organizations." University of Pennsylvania Journal of International Economic Law; Summer 1998; 19(2): pp. 587-638.

Article provides a detailed analysis of the growing importance of dispute resolution systems in international organizations. Author discusses questions of legitimacy and democracy in international organization by examining the dispute resolution mechanisms used in these organizations. Author argues that increasing individual involvement in dispute resolution is an appropriate way to increase the legitimacy of international trade organizations.

{92} SUBJ MATTER: INT'L

**Schoenbaum, Thomas J.** "WTO Dispute Settlement: Praise and Suggestions for Reform." International and Comparative Law Quarterly; July 1998; 47(3): pp. 647-658.

Article gives an overview of the World Trade Organization's (WTO) dispute settlement process. The article highlights the successes of the WTO dispute settlement process, but focuses on specific problems of this process. The author concludes by proposing reforms to the WTO process.

{92} SUBJ MATTER: INT'L

**Schwartz, Eric A.** "Court-Assisted Discovery in Aid of International Commercial Arbitration: Two Recent US cases Regarding the Applicability of 28 U.S.C. § 1782." Journal of International Arbitration; September 1998; 15(3): pp. 53-64.

Author discusses the possible impact of two recent decisions of the United States District Court of the Southern District of New York on discovery in international arbitration. These two cases turned on the 28 U.S.C. § 1782's definition of "tribunal." The New York District Court determined that private international arbitrations are not "tribunals" and are not covered by the statute. The statute allows foreign jurisdictions to seek help from U.S. courts to compel discovery. The author discusses the impact of these decisions and speculates as to whether they will be upheld on appeal.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{92} SUBJ MATTER: INT'L

**Schwartz, Michael G. and Amy Yip-Kikugaw.** "*Sunshine Beauty Supplies, Inc. v. United States District Court: Mandatory Venue and Motions to Confirm or Vacate Under the Federal Arbitration Act.*" University of San Francisco Law Review; Spring 1998; 32(3): pp. 629-652.

Article describes the current controversy of whether sections 9 and 10 of the Federal Arbitration Act (FAA) should be interpreted as having a

mandatory venue and motions standard or a permissive standard to confirm or vacate an arbitration agreement. Authors argue that case law, statutory interpretations, and commentator's analysis clearly supports a permissive standard interpretation of sections 9 and 10 of the FAA.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Sciarra, Vanessa P.** "The World Trade Organization: Services, Investment, and Dispute Resolution." International Lawyer; 1998; 32(3): pp. 923-931.

Article provides a discussion of the areas in which World Trade Organization (WTO) members are using dispute resolution. Author reveals that WTO members are using the dispute resolution system to address violations of various commitments and barriers to trade that affect services. Author predicts future trends for the use of dispute settlement by WTO members.

{92} SUBJ MATTER: INT'L

**Seifi, Jamal.** "The New International Commercial Arbitration Act of Iran." Journal of International Arbitration; June 1998; 15(2): pp. 5-35.

Article focuses on the Iranian Parliament's recently adopted International Commercial Arbitration Act, modeled after the 1985 United Nations Commission on International Trade Law's Model Law on International Commercial Arbitration. Author highlights existing Iranian law and its deficiencies, and points out the significance of the new Act. The remainder of the article provides a lengthy commentary on the provisions of the new Act. Author concludes that adoption of this Act is a great step forward for Iran.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Senger-Weiss, Elisabeth.** "Enforcing Foreign Arbitration Awards." Dispute Resolution Journal; February 1998; 53(1): pp. 70-78.

Article discusses the various solutions to the difficulties that inhere in the enforcement of arbitral awards involving parties of diverse nationality provided by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitration Awards (the New York Convention). Successful parties in an arbitration proceeding are sometimes forced to look to the courts of another nation to enforce the award. In these cases, enforcement of the award is subject to the law of the jurisdiction in which the enforcement is sought. But international law does not require that the arbitral award be recognized by the forum unless some international

agreement requires otherwise. Furthermore, international law permits the forum state to discriminate against foreign arbitral agreements and awards. The agreement reached at the New York Convention, on the other hand, mandates recognition of international arbitral awards and agreements. It has been widely accepted in the international community, with signatories from East and West. The Article recognizes its importance in the arena of international trade disputes, traces its historical development, and elaborates on several of the Convention's provisions, with emphasis on their implementation in the United States.

{92} SUBJ MATTER: INT'L

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Serventy, Natasha.** "Understanding Shame in Mediation and Dispute." Australian Dispute Resolution Journal; 1998; 9(2): pp. 150-160.

Article outlines the "affects" theory that explains the formation of human emotions as a response to external stimuli. The author suggests that mediators can increase success in facilitating dispute resolution by learning to identify ways in which parties "mute" their feelings of shame. The author identifies four typical behavioral responses to unpleasant emotions; attacking others, withdrawal, avoidance, and attacking self. The author recommends mediators learn to respond to these behaviors by implementing, when appropriate, reality tests, problem analysis, and by establishing ground rules and offering praise and empathy.

{21} MED: RELATED PROCESSES-GENERAL

**Shapiro, Ronald M.** (1998). The Power of Nice: How To Negotiate So Everyone Wins – Especially You! New York, John Wiley & Sons, Inc.

Author advocates "The Power of Nice" claiming that one can get what he wants and be a nice guy by helping the other side get what they want. Author believes that the myth of win-win negotiation can be a reality and describes how both parties can win. Book posits that preparing, probing, and proposing are necessary elements of any negotiation. Author urges repetition, practice, and habit to get what you want in negotiations.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Sharp, Dennis.** "The Many Faces of Mediation Confidentiality." Dispute Resolution Journal; November 1998; 53(4): pp. 56-63.

Article discusses the lack of uniformity in California and other states regarding statutory mediation confidentiality. The confidentiality issues discussed are whether admission statements made during mediation

proceedings are admissible for arbitration proceedings, whether expert testimony prepared for mediation proceedings are admissible in trial proceedings, when mediation begins and ends, whether evidence of an oral contract agreed upon in a mediation promise is admissible in an action to enforce the oral contract, whether the mediator has a duty to disclose threats of criminal behavior directed towards a party in a mediation proceeding by the opposing party, whether a mediator's reports and recommendations are admissible to a subsequent proceeding, and whether attorney's fees may be granted by a court to a mediator who squashed an inappropriate subpoena requesting the mediator to testify as a witness in a trial.

{21} MED: RELATED PROCESSES-GENERAL

{132} CONFIDENTIALITY

**Shaw, Dana.** "Mediation Certification: An Analysis of the Aspects of Mediator Certification and an Outlook on the Trend of Formulating Qualifications for Mediators." Toledo Law Review; 1998; 29: pp. 327-352. After a comprehensive look into mediation and the various roles of mediators, the author discusses the concerns of requiring mediator certification. The primary concern opposing certification, the author states, is that it will corrupt the pure nature of mediation. Advocates, on the other hand, argue for certification as a means for quality control and professionalism, states the author. Author argues that although mediation does not require a mediator to be skilled in a certain practice, the field of mediation does need certification to receive respect and to legitimize the mediation process.

{21} MED: RELATED PROCESSES-GENERAL

**Shichor, David and Dale K. Sechrest.** "A Comparison of Mediated and Non-mediated Juvenile Offender Cases in California." Juvenile & Family Court Journal; Spring 1998; 49(2): pp. 27-39.

Article discusses a new approach to providing justice: restorative justice. Restorative justice allows victims and offenders, through dialogue and mediation, to take an active role in problem solving to restore the physical, material, and psychological losses suffered by victims and community members. In particular, the article focuses on the California Victim Offender Reconciliation Program, a restorative justice model. Authors find that the program has best results when dealing with first-time juvenile offenders who commit minor crimes. Authors also find that offenders who go through the program have a lower recidivism rate.

## {21} MED: RELATED PROCESSES-GENERAL

**Sholl, Robert K. and Christian K. Jenkins.** "Agreements to Arbitrate Statutory Employment Claims." The Wisconsin Lawyer; April 1998; 71(4): pp. 15-17, 44-46.

Article examines pitfalls for employers to avoid when drafting agreements with employees to submit work related grievances to arbitration. Authors suggest that while arbitration is more cost effective for employers than defending lawsuits in court, these savings will not be realized if courts determine the arbitration agreements were improperly executed. Applying federal and Wisconsin law, the authors recommend arbitration agreements should be completed as a separate document distinct from employee handbooks, should not strip the employee of any statutorily granted causes of action or remedies, should be broadly drafted, and should provide that the final arbitration award be binding.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

**Sims, Kathy and Clive Sefton.** "Negotiation: Sex or Style?" Australian Dispute Resolution Journal; May 1998; 9(2): pp. 106-109.

Article provides a female perspective on negotiation and offers some mediation advice from a male-female team. Authors contend that gender is often an important element in negotiations, but suggests that this factor may be trumped by employment concerns. Author is a proponent of principled negotiation.

{21} MED: RELATED PROCESSES-GENERAL

**Sink, Charles.** "Negotiating Dispute Clauses that Affect Damage Recovery." Construction Lawyer; April 1998; 18(2): pp. 22-24.

Article provides strategic and practical information on drafting damage recovery arbitration provisions in construction contracts. The author offers suggestions for advantageous drafting contingent upon which party is being represented. Provisions that are examined include, among others, consequential damages, profit, interest, and punitive damages.

{80} SUBJ MATTER: CONSTRUCTION

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Sklar, Stanley P.** "How to Present Your Case in Arbitration." The Practical Real Estate Lawyer; May 1998; 14(3): pp. 25-32.

Article presents practical advice in preparing and presenting a case in

arbitration. Article dispels myths about arbitration through a discussion of these myths versus reality. In preparing for an arbitration, the author suggests that participants should: (1) be willing to pay for a quality arbitration panel, (2) avoid the use of an appointed arbitrator, (3) investigate potential arbitrators, (4) be prepared with exhibits, (5) ensure all relevant people have copies of necessary information, (6) prepare witnesses, and (7) logically organize the case.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Smil, H. and V. Pechata** (1998). Commercial Arbitration - An International Bibliography. New York, Parker School of Foreign and Comparative Law, Columbia University, Juris Publishing, Inc.

Source provides a fairly comprehensive international bibliography on commercial arbitration. It contains bibliographies of publications from all over the world relating to commercial arbitration. Although its focus is on English language sources, it also includes books and articles in French, German, Italian, Spanish, as well as some other languages. The entries are arranged both according to subject matter and geography.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{92} SUBJ MATTER: INT'L

**Smith, Robert M.** "Mediation Rewards Creative Advocacy." The California Lawyer; December 1998; 18: pp. 27.

Article provides ten suggestions for mediation advocates to help make the process work. Suggestions include that decision-makers be present, that parties bring relevant documents, and that parties act constructively. Author urges advocates to follow these guidelines to enable an effective mediation process.

{21} MED: RELATED PROCESSES-GENERAL

**Snider, Teresa.** "The Discovery Powers of Arbitrators and Federal Courts Under the Federal Arbitration Act." Tort & Insurance Law Journal; Fall 1998; 34(1): pp. 101-114.

Article examines the power of arbitrators under the Federal Arbitration Act (FAA) to compel nonparties to produce documents and to testify in depositions and at arbitration hearings. Author analyzes the authority of courts to enforce subpoenas issued by arbitrators and to order discovery in aid of arbitration. Author concludes that arbitrators under the FAA can exercise broad powers of discovery, even over nonparties.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Sochynsky, Yaroslav.** "Mediating Real Estate Disputes." Probate and Property; July-August, 1998; 12(4): pp. 22-27.

Article describes the advantages of using mediation in real estate disputes. Author believes that mediation is beneficial to both parties and supports the use of mediation over arbitration or litigation in resolving real estate disputes. Author provides guidelines for how to effectively use mediation to avoid litigation in real estate disputes.

{21} MED: RELATED PROCESSES-GENERAL

**Somers, Clifford L.** "Method, Myth and Misconception in Circuit Civil Mediation." Trial Advocate Quarterly; Summer 1998; 17(3): pp. 39-44.

Article discusses legal underpinnings involved in mediation. It sets forth the definition of mediation, who may mediate, who must attend the mediation, the issue of confidentiality, and the rule in Florida that parties must appear with authority to settle. Author argues that court orders requiring a party to make offers which are satisfactory to opposing parties violates that party's constitutional right of access to the courts. Author also warns that mediation is not merely an intellectual process.

{21} MED: RELATED PROCESSES-GENERAL

**Spagna, Rocco J.** "The Challenge of Mediation in Medical Malpractice Disputes." For the Defense; August 1998; 40(8): pp. 33-38.

Article focuses on the use of mediation as an alternative or complement to litigation in medical malpractice disputes. Specifically, the author contends that mediation challenges attorneys to undergo a personal and professional self-examination that ultimately will do away with the attorney's natural resistance to mediation. Author concludes that overcoming resistance from the legal community is one of the larger impediments to widespread use of mediation in medical malpractice disputes.

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{21} MED: RELATED PROCESSES-GENERAL

**Speidel, Richard E.** "Consumer Arbitration of Statutory Claims: Has Pre-dispute (Mandatory) Arbitration Outlived Its Welcome?" Arizona Law Review; Fall 1998; 40(3): pp. 1069-1094.

Article discusses the use of consumer arbitration in settling statutory claims. Author questions the basic assumptions of fairness in a unitary model of arbitration under the Federal Arbitration Act, especially under statutory claims. Author argues that arbitration agreements should not be



enforced unless completely voluntary and that arbitrators should have to give a rationale for their decision. Author concludes that a unitary model of arbitration enforced by mandatory order in consumer arbitrations is no longer welcome.

{79} SUBJ MATTER: CONSUMER

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Spencer, David.** "Complying with a Requirement to Negotiate in Good Faith." Australian Dispute Resolution Journal; August 1998; 9(3): pp. 226-231.

Article examines the issue of what constitutes good faith negotiation under the Australian Native Title Act of 1983 in light of the ruling by the National Native Title Tribunal in *Western Australia v. Taylor*. Author undergoes a case analysis in which he argues that the good faith standard under the law has become more clear by way of the reasoning in the case. Author concludes that the *Taylor* decision is an important case that will help Australian courts determine whether there has been good faith negotiation.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

{138} ETHICS: GENERAL

**St. Antoine, Theodore J.** "Mandatory Arbitration of Employee Discrimination Claims: Unmitigated Evil or Blessing in Disguise?" Thomas M. Cooley Law Review; 1998; 15: pp. 1-9.

Article is an adaptation of a lecture delivered at the Thomas M. Cooley School of Law which offers several justifications for endorsing a policy of mandatory arbitration of employment disputes. The author observes that while on its face mandatory arbitration appears to be a "brazen affront to public policy" because it deprives employees of the right to a jury trial provided them by law, in practice it functions more effectively and results in greater vindication of employees' rights than do the overloaded federal courts and the underfunded EEOC. The author notes that few first rate lawyers will accept an employment dispute unless it is likely to bring in a large damage award, which translates into the fact that the vast majority of employees' claims against their employers, even statutory claims, are left unredressed if left to traditional litigation. The author notes that the EEOC, with its backlog of cases in excess of 100,000, is likely to be of little help. Furthermore, even if the employee is able to get his claim into court, it is often dismissed on a motion for summary judgment in favor of the employer. With these considerations in mind, the author concludes that to condemn mandatory arbitration of employment disputes would be

premature, if not an outright mistake.

{96} SUBJ MATTER: EMPLOYMENT (NON-UNION)

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**St. John-Ritzen, Cathie.** "Putting Some Teeth into Alternative Dispute Resolution." Journal of the Missouri Bar; May/June 1998; 54(3): pp. 137-139.

Article briefly examines the effects of 1996 revisions to a Missouri Supreme Court ruling on ADR. Author contends that the new rule will encourage the use of ADR methods to facilitate settlement and other nontrial resolution in civil cases. Author also discusses the reactions of several members of the Missouri bench, bar, and one university professor to the new rule.

{74} SUBJ MATTER: GENERAL

**Steckman, Lawrence A. and James J. Cleary, Jr.** "Construction Industry AIEs: Problems of Contract Interpretation and Solutions." Defense Counsel Journal; January 1998; 65(1): pp. 78-99.

Author discusses trends in judicial interpretation of additional insured endorsements (AIEs) in the construction industry. Author, focusing on New York law, suggests that the recent flood of litigation involving AIEs cannot improve without more careful negotiation and review of AIE language. Article provides discussion on the advantages and disadvantages of AIEs, recurrent litigation issues of endorsement language, and strategies available to minimize these problems.

{80} SUBJ MATTER: CONSTRUCTION

**Stegehuis, Christine.** "Mandatory Arbitration and the Medical Malpractice Plaintiff." Colorado Lawyer; May 1998; 27(5): pp. 77-80.

Article provides a discussion on the Federal Arbitration Act (FAA) as it relates to the mandatory arbitration provision in HMO contracts. According to the author, two major questions affect the application of the FAA to HMO contracts. First, does the McCarram-Ferguson Act, passed to limit the federal regulation of the insurance industry, prevent HMO's from relying on the FAA to preempt state law limitations on arbitration? Second, should the same laws that regulate the insurance industry, including the McCarram-Ferguson Act, regulate HMO's?

{98} SUBJ MATTER: MEDICAL MALPRACTICE

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Stein, Jay W.** "Mediation & the Constitution." Dispute Resolution Journal; May 1998; 53(2): pp. 22-28.

Article discusses factors, including crowded dockets that urge for the development of alternatives to litigation. Author evaluates the argument that mandatory mediation is unconstitutional. Author disputes this argument by laying out the reasons for mediation's constitutionality. Author concludes that even compulsory mediation programs are constitutional.

{21} MED: RELATED PROCESSES-GENERAL

**Stewart, Hope T.** "The Equitable Estoppel Argument For and Against Commercial Arbitration: From *Hughes Masonry Co., Inc. v. Clark County School Building Corp.* to *Northern Ltd., v. R.E. James.*" Commercial Law Journal; Fall 1998; 103(3): pp. 336-358.

Article discusses the Federal Arbitration Act and the doctrine of equitable estoppel. Author explains that judges tend to liberally enforce arbitration agreements. The author discusses the Federal Arbitration Act and the traditional doctrine of equitable estoppel. The author argues that arbitrations are invalid for lack of mutual remedies. The article concludes by summarizing what types of contracts may be enforced in light of the Federal Arbitration Act.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Stewart, Ian B.** "Good Faith in Contractual Performance and in Negotiation." Australian Law Journal; May 1998; 72(5): pp. 370-391.

Article analyses the extent to which obligations of good faith implicitly regulate contractual performance, the extent to which good faith is required in pre-contractual negotiations, and the issue of whether agreements to negotiate in good faith should be enforced. Author concludes that there is no reason Australian law should imply a duty of good faith in contract performance and negotiations. If the parties' contract contains a provision requiring good faith, then courts should enforce good faith through normal contract principals.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

{126} REQUIREMENTS: CONTRACTUAL CLAUSES

**Stienstra, Donna.** "Judicial Perceptions of DCM and ADR in Five Court Demonstration Programs under the CJRA." Judges Journal; Spring 1998; 37(2): pp. 16(7).

Article provides a detailed description of Differentiated Case Management (DCM) and how ADR is involved in the DCM process. The author

describes the initial success of DCM in its experimental phase and the predominantly positive reaction of judges to DCM. DCM appears to add uniformity, structure and predictability to cases. Author strongly supports DCM adoption in jurisdictions that are prepared to make the necessary adjustments to case management.

{133} COURT REFORM

**Stipanowich, Thomas J.** "The Multi-Door Contract and Other Possibilities." Ohio State Journal on Dispute Resolution; 1998; 13(2): pp. 303-404.

Article provides a history of the original "multi-door" courthouse theory and how courts have and have not followed the original theory. Author traces the changes that have occurred in court ADR methods and discusses their future. Author focuses on the construction industry, and what changes ADR has brought to the industry.

{133} COURT REFORM

**Stitt, Alan J.** (1998). Alternative Dispute Resolution for Organizations: How to Design a System for Effective Conflict Resolution. Toronto, John Wiley & Sons Canada Limited.

Book outlines the methods and mechanisms that business firms, government agencies, charitable organizations, social service providers, and schools can implement a means to resolve both internal and external conflicts. The book is intended as an effective aid to both internal and external dispute resolution systems designers and is not aimed at a theoretical exposition of ADR techniques or their underpinnings. The author discusses different types of ADR systems, their goals, and modes of implementation. In addition, the author provides a framework for determining the sort of ADR system that is most compatible with a particular type of organization, a discussion of rights-based versus interest-based ADR systems, and materials regarding the training and evaluation of ADR processes and the persons involved in them. A bibliography, including a summary of the sources listed therein, is appended for further reading on the subject.

{146} ORGANIZATION POLICIES AND RULES

**Stoneman, Tracy Pride.** "Securities Arbitration Part II: A Hypothetical Securities Arbitration Case." Colorado Lawyer; November 1998; 27: pp. 61-63.

Author examines the details of the process of a securities arbitration case. The article discusses topics including: the preliminary groundwork,

choosing where to file the claim, deciding on an arbitration panel, conducting discovery, and the actual arbitration. Author advocates the use of securities arbitration proceedings and notes that most claims do settle and those that reach arbitration usually come out in favor of the claimant.

{106} SUBJ MATTER: SECURITIES

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Stoneman, Tracy Pride.** "Securities Arbitration Part I: A Primer." Colorado Lawyer; September 1998; 27(9): pp. 73-79.

Article provides a brief overview of securities arbitration. Author comments that securities arbitration is a large business due to a Supreme Court ruling that mandatory arbitration requirements for customer disputes are acceptable. Author cites common problems that lead to arbitration and the typical causes of action. Lastly, the author comments on how the Code of Arbitration Procedure has extensive influence on the arbitration process, the arbitrators themselves, arbitration awards, and expert witnesses.

{106} SUBJ MATTER: SECURITIES

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Stulberg, Joseph B.** "Fairness and Mediation." Ohio State Journal on Dispute Resolution; 1998; 13(3): pp. 909-945.

Article addresses how to incorporate fairness into the mediation process through legislation. Before proposing means by which to ensure fairness, the author discusses a conception of fairness. With this notion of fairness in mind, the author proposes legislation that supports democratic decisionmaking.

{144} LEGISLATION

{21} MED: RELATED PROCESSES-GENERAL

**Stylianou, Katherine.** "The Tensions Between Family Mediation Principles and the Formal Legal System." Family Law; April 1998; 28: pp. 211-213.

Article explores the inevitable tensions that emerge in the development of ADR. The author contends that current developments in family law, for instance the Family Law Act of 1996 (UK), have caused tension with the aims, priorities, and practice of mediation. The author supports a continued dialogue between the Legal Aid Board and experienced mediators as a means to mitigate the effects of the inevitable tensions and contradictions that have emerged.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

**Sullivan, Mark E.** "Ten Tips (and Traps) for Family Law Negotiations." American Journal of Family Law; Summer 1998; 12: pp. 75-82.

Articles examines ten "tips and traps" found in domestic case negotiations. Author encourages lawyers who are involved in domestic cases to develop good negotiating skills because negotiations are involved in almost every case. Article addresses topics such as negotiating skills, what a lawyer needs to know about the parties to a domestic case negotiation, and how to resolve "unsolvable" problems.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL  
{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

**Tabbakh, Karl.** "The Standard of Review of Grievance Arbitrators when Deciding on Human Rights Issues: The 'Magnificent Goal' vs. Industrial Peace." McGill Law Journal; August 1998; 43(2): pp. 261-286.

Article discusses the affects of the Ontario Labour Relations Act (OLRA) on the judicial review of arbitration awards in disputes involving human rights issues. Author discusses ways to balance special concerns for human rights with concerns of dispute resolution. The author concludes that OLRA is unlikely to change the traditional lack of deference to an arbitrators' decisions on human rights claims.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Taft, Frederick.** "Negotiator's Toolbox." Ohio State Journal on Dispute Resolution; Fall 1998; 14(1): pp. 235-243.

Through story, analogy, and experience, the author illustrates "twelve tools" to effective negotiation. The author explains the importance of basic rules such as effective listening, evaluating the parties' bargaining positions, and bluffing wisely.

{1} NEG: W/ OR W/O ASSIST OF 3D-PARTY NEUTRAL-GENERAL

**Tenerowicz, Matthew A.** "'Case Dismissed' -- or is it? Sanctions for Failure to Participate in Court-Mandated ADR." Ohio State Journal on Dispute Resolution; 1998; 13(3): pp. 975-1003.

Article discusses the use of appropriate sanctions by a judge for failure to participate in mandatory ADR. Before providing for a standard under which appropriate sanctions can be determined, the author discusses the source of a court's authority to mandate participation in ADR. Article also touches on the issue of what is expected of parties who are ordered to participate in ADR.

## {133} COURT REFORM

**Thornton, Robert J.** "Comparable Worth Pay Policy in the Republic of Ireland." Journal of Collective Negotiations in the Public Sector; Winter 1998; 27(1): pp. 53-62.

Article examines the policy of equal pay for equal work regardless of gender in a setting that has been slow to recognize the equality of women. Article evaluates the role of the Labour Relations Commission, a dispute-resolution agency, in supporting this policy.

{93} SUBJ MATTER: LABOR-GENERAL

**Trackman, Leon E.** "The Efficient Resolution of Business Disputes." Canadian Business Law Journal; September 1998; 30(3): pp. 214-219.

Article analyzes the attitudes and experiences of judges, business lawyers, and corporate counsel towards ADR in Canada. The author notes that, although ADR has recently received considerable attention in the Canadian legal community, the use of ADR is largely misapplied and misunderstood. The author explores different options available within ADR in the Canadian legal system and points out the advantages of the collaborative process.

{74} SUBJ MATTER: GENERAL

**Tran, Thuy Le.** "Comment, Vietnam: Can An Effective Arbitration System Exist?" Loyola of Los Angeles International and Comparative Law Journal; January 1998; 20(2): pp. 361-387.

Note provides an overview of international arbitration, focusing on the arbitration system in Vietnam. Author contends that Vietnam can not have an effective arbitration system due to the ineffectiveness of its current legal system. Author focuses on the lack of local enforcement and provides some suggestions for those foreign investors who use the Vietnamese arbitration system.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{92} SUBJ MATTER: INT'L

**Trappe, Johannes.** "The Arbitration Proceeding." Journal of International Arbitration; September 1998; 15(3): pp. 93-102.

Author describes seven basic principles that are key to the arbitration process, which are found in the Model Law on International Arbitration. These principles include: 1) the freedom to arbitrate and to agree upon arbitration; 2) an arbitration agreement must respect the rights of both contracting parties; 3) the arbitrator must be neutral; 4) the parties set the

rules for the arbitration; 5) the arbitrators must give the parties the possibility to plead their case; 6) the arbitrators must apply the law; 7) the parties may challenge the arbitrators' procedural acting. Author describes the importance and impact of these principles on the arbitration process.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Turpin, Richard A.** "An Analysis of Public Sector Interest Arbitrators' Assessments of Wage Comparability." Journal of Collective Negotiations in the Public Sector; Winter 1998; 27(1): pp. 45-51.

Article presents a study that sampled public sector-interest arbitration awards. In the absence of clear legislative guidance, arbitrators revealed factors they considered in assessing wage comparability, one of the three most common criteria used in the process of comparing wages and benefits.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Tyrril, John.** "The Dark Side of Partnering." Australian Dispute Resolution Journal; August 1998; 9(3): pp. 165-178.

Article proposes to identify problems with and obstacles to commercial partnering. Author contends that by identifying inadequacies and risks in partnering approaches and implementation, partnering of commercial relationships can be strengthened. Article concludes with a series of recommendations that can be employed to minimize problems in partnering.

{76} SUBJ MATTER: COMMERCIAL

**United States Bureau of Land Management, Montana State Office** (1998). Equal Employment Opportunity: Alternative Dispute Resolution/ U.S. Department of the Interior, Bureau of Land Management, Montana State Office. Billings, United States Govt. Press.

Pamphlet provides definitions, purposes, and uses for mediation in the context of alternative dispute resolution. The pamphlet sets out a series of objectives for ADR and lists areas where ADR use is excluded or inappropriate. The purpose of the pamphlet is to familiarize Bureau of Land Management employees with a cursory overview of mediation and ADR.

{87} SUBJ MATTER: GOV'T

{155} TEACHING

{21} MED: RELATED PROCESSES-GENERAL

**United States Commission on Civil Rights** (1998). Helping State and Local Governments Comply with the ADA. Washington, D.C., U.S. Commission on Civil Rights.



Manual is designed to assist state and local government compliance with the ADA by analyzing how the federal government enforces Title II, Subpart A, of the ADA. The authors believe that the Department of Justice has been fairly successful in implementing and enforcing the ADA. In particular, alternative dispute resolution techniques have worked well in resolving discrimination complaints.

{87} SUBJ MATTER: GOV'T

**Van Deusen, Mark C.** "The Attorney-Client Privilege for In-House Counsel When Negotiating Contracts: A Response to *Georgia Pacific Corp. v. Gaf Roofing Manufacturing Corp.*" William and Mary Law Review; March 1998; 39(4): pp. 1397-1439.

Article examines the attorney-client privilege and its application to corporate in-house counsel while acting as negotiator. Author contends that courts should adopt a new standard for determining when the attorney-client privilege protects mixed business and legal discussions between a client and its in-house counsel. Author supports the adoption of the 'significant amount' standard as the new test for determining when an in-house negotiator should be covered by the attorney-client privilege while negotiating.

{81} SUBJ MATTER: CORPORATE

**Veeder, V. V.** "The Lena Goldfield Arbitration: The Historical Roots of Three Ideas." International and Comparative Law Quarterly; October 1998; 47(4): pp. 747-792.

Article examines the history of a dispute between an English company and the Soviet Union over the company's operation of a gold mining facility in the Soviet Union. According to the authors, the arbitral tribunal involved in the dispute applied three innovative ideas to the facts of the case. These ideas include: 1) the application of "general principles of law" to a private legal dispute, 2) the power of a majority of the members of a panel to continue without the presence of the minority, and 3) the use of jurisdictional concepts such as the "separability" of an arbitration clause and the scope of reference of an arbitral process.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Vibhute, K. I.** "Waiver of State Immunity by an Agreement to Arbitrate and International Commercial Arbitration." Journal of Business Law; 1998; November: pp. 550-563.

Article discusses the impact that sovereign immunity plays when countries

involved in international trade agree to arbitrate. Unlike typical arbitration proceedings that are subject to judicial supervision and control, arbitration agreements among nations do not have such supervision, and could theoretically be ignored by nations invoking sovereign immunity. Article discusses whether an agreement between countries involved in transnational trading implies a waiver of sovereign immunity.

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

{92} SUBJ MATTER: INT'L

**Wade, John.** "Current Trends and Models in Dispute Resolution: Part I." Australian Dispute Resolution Journal; February 1998; 9(1): pp. 59-71.

Part I of a two-part article generalizing trends in mediation toward providing more services for less money. The author includes many charts and other visual aids to demonstrate the wide variety of possible mediation and arbitration strategies and goals.

{21} MED: RELATED PROCESSES-GENERAL

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Wade, John.** "Current Trends and Models in Dispute Resolution: Part II." Australian Dispute Resolution Journal; May 1998; 9(2): pp. 113-128.

Part 2 of a two part article examines dispute resolution processes in Australia and other jurisdictions. In this part, the author discusses factors that affect dispute resolution quality, methods of dispute resolution practice, and user satisfaction with dispute resolution processes. Author notes that dispute resolution service providers must take these factors into account in their practices.

{74} SUBJ MATTER: GENERAL

**Wauben, William M. and Janice I. Wauben.** "Let's Compromise: A look at the IRS's Offer in Compromise Program." Colorado Lawyer; May 1998; 27(5): pp. 73-75.

Article provides insight into the infrequently utilized Internal Revenue Service (IRS) Offer in Compromise program. The IRS uses the program to resolve "troublesome collection cases" that have a low probability of resolution. The system provides an opportunity for individuals with insurmountable tax liability to negotiate with the IRS in settling the liability. The authors note that the program has stringent guidelines and provides no guarantee against future collection efforts. However, if the IRS is satisfied with the compromise, it provides the taxpayer with a means to conclude the struggle with the IRS.

{108} SUBJ MATTER: TAX

**Wedderburn, Kenneth William.** "A British Duty to Bargain - a Footnote on the End-game." Industrial Law Journal; September 1998; 27(3): pp. 253-258.

Article analyzes the Canadian White Paper on labor law reform. Author compares and contrasts current labor/employer relationships in the United States, France, Italy, and England in an effort to identify potential weaknesses with the current Canadian system and considers the potential impact of the White Paper. Author addresses the issue of individual employment contracts used by employers in unionized companies and the impact the contracts will have on collective bargaining.

{95} SUBJ MATTER: LABOR-MANAGEMENT (UNIONS)

**Wesley, Edwin J.** "Reflections on Court-Annexed ADR in the Eastern and Southern Districts of New York." Judges Journal; Spring 1998; 37(2): pp. 33-35, 66.

Article provides a brief evaluation of the use of both voluntary and mandatory arbitration in the Eastern and Southern districts of New York. Author points out the advantages of mandatory arbitration and describes the success of mandatory arbitration programs in both districts. Author supports adoption of mandatory arbitration programs in other courts and describes the criteria judges should use in determining if a case is a good candidate for such programs.

{133} COURT REFORM

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

**Wolfe, Peter Y.** "Making Mediation Successful." New Hampshire Bar Journal; June 1998; 39(2): pp. 38-44.

Author discusses factors that lead to successful mediation based upon his observation of private and court-enforced mediation in four counties in New Hampshire. These factors include selecting the correct type of mediation style (evaluative or facilitative), proper preparation, and the involvement of the client in the process.

{21} MED: RELATED PROCESSES-GENERAL

**Yerxa , Rufus H. and Demetrios J. Marantis.** "Assessing the New WTO Dispute System: A U.S. Perspective." International Lawyer; 1998; 32(3): pp. 795-810.

Article provides an overview of the categories of cases that have been

settled by dispute resolution under the WTO's Dispute Settlement Understanding (DSU). Author contends that the United States has benefited from the DSU and has only had to make a few marginal policy changes in response to DSU's implementation. Authors postulates that the U.S. may not fair as well in future DSU cases.

{92} SUBJ MATTER: INT'L

**Young, Simon.** "Cross-Cultural Negotiation in Australia: Power, Perspectives and Comparative Lessons." Australian Dispute Resolution Journal; February 1998; 9(1): pp. 41-58.

A discussion of the various power imbalances and cultural considerations affecting the ultimate success or failure of the use of dispute resolution in land title claims between indigenous and non-indigenous people in Australia. The author particularly champions the work of the National Native Title Tribunal to settle these disputes and looks ahead to continued development in the field.

{147} POWER IMBALANCE

**Yuan, Lim Lan.** "An Analysis of Intervention Techniques in Mediation." Australian Dispute Resolution Journal; August 1998; 9(3): pp. 196-205.

Article examines intervention techniques applied in mediation. Author contends that the confidentiality of mediated disputes results in the hindrance of the education and training of mediators. In particular, mediators cannot learn proper intervention technique. Through the utilization of three disputes as illustration, the author seeks to teach mediators proper intervention techniques

{21} MED: RELATED PROCESSES-GENERAL

{155} TEACHING

**Zaher, Sandra.** "The Feminization of Family Mediation." Dispute Resolution Journal; May 1998; 53(2): pp. 36-43.

Article examines the use of mediation in the context of resolving family disputes; in particular, issues of separation, divorce, and child custody. Author analyzes the positions of critics of family mediation and advocates mediation as a viable alternative to litigation. Author provides proposals for mediation systems that will respond more effectively to concerns regarding power imbalances that disfavor women.

{85} SUBJ MATTER: FAMILY (DOMESTIC REL)

{21} MED: RELATED PROCESSES-GENERAL

**Zimmerman, James.** "Restrictions on Forum-Selection Clauses in Franchise Agreements and the Federal Arbitration Act: Is State Law Preempted?" Vanderbilt Law Review; April 1998; 51(3): pp. 759-786.

Article examines the question of whether forum-selection clauses between franchisers and franchisees are preempted by the Federal Arbitration Act (FAA). Franchisers, who typically have superior bargaining power, often insert forum-selection clauses mandating arbitration of all disputes in a location inconvenient to the franchisee. State laws invalidating such forum-selection clauses are at odds with the preemptive power of the FAA. The author contends that state laws invalidating forum-selection clauses in franchise contracts should not be preempted by the FAA. The author concludes that federal preemption is incorrect because these state laws do not hold arbitration agreements to a higher standard and are consistent with FAA policy and purpose.

{76} SUBJ MATTER: COMMERCIAL

{44} ARB: MANDATORY, COURT-ANNEXED - GENERAL

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